

A Thesis Submitted for the Degree of PhD at the University of Warwick

Permanent WRAP URL:

<http://wrap.warwick.ac.uk/156135>

Copyright and reuse:

This thesis is made available online and is protected by original copyright.

Please scroll down to view the document itself.

Please refer to the repository record for this item for information to help you to cite it.

Our policy information is available from the repository home page.

For more information, please contact the WRAP Team at: wrap@warwick.ac.uk

**STRIKING THE SHADOW COMMANDER:
ASCERTAINING THE LEGITIMACY OF THE DRONE STRIKE ON GEN. QASEM SOLEIMANI
THROUGH AN EXAMINATION OF THE U.S. CLAIM TO PRE-ATTACK SELF-DEFENCE**



Ruxandra Oana Eugenia Vlad

Department of Politics and International Affairs

University of Warwick

A dissertation submitted for the degree of

Doctor of Philosophy

15 December 2020

TABLE OF CONTENTS

DEDICATION	V
DECLARATION	VI
ABSTRACT	VII
ABBREVIATIONS	VIII
DISSERTATION WORD COUNT	X
CHAPTER 1: INTRODUCTION	1
CHAPTER 2: METHODOLOGY	8
METHODOLOGICAL APPROACH	8
PHILOSOPHICAL UNDERPINNING	13
SCHOOLS OF THOUGHT	20
FRAMEWORK & DESIGN	33
DATA SELECTION & COLLECTION	40
CHAPTER 3: LITERATURE REVIEW	49
INTERNATIONAL LAW: ORIGINS, PRACTICE AND COMPLIANCE	49
SELF-DEFENCE & THE LAW	59
PRE-ATTACK SELF-DEFENCE: CONDITIONS & REQUIREMENTS	66
INTERSECTING LITERATURE	112
CHAPTER 4: LEARNING FROM THE PAST	143
THE FAILED FADLALLAH ASSASSINATION	143
THE MUGHNIYEH OPERATION	153
CHAPTER 5: WHY SOLEIMANI? WHY NOW?	161
POWER, INFLUENCE & LEGACY	161
PLOTING & PLANNING	173
HUNTING SOLEIMANI: FROM BUSH TO TRUMP	176
CHAPTER 6: STRIKING THE SHADOW COMMANDER	183
THE STRIKE	184
OPERATION SHAHID SOLEIMANI	196
MOUNTING SUSPICIONS	201
THE DOMINANT POLITICAL NARRATIVE	214
US FOREIGN POLICY: HISTORICAL IDIOSYNCRASIES	217
CHAPTER 7: RED (WHITE AND BLUE) HERRING	220
KILLING SOLEIMANI: ASSASSINATION, KILLING OR EXECUTION?	220
CONJECTURE & SPECULATION: INTELLIGENCE IN THE TRUMP ERA	234
WHEN ALL ELSE FAILS: PREEMPTIVE SELF-DEFENCE	257
CHAPTER 8: CLASSIFYING THE SOLEIMANI STRIKE	262
CHAPTER 9: PRESCRIPTIONS & SUGGESTIONS	281
CHAPTER 10: CONCLUSION	307
APPENDIX: TERMINOLOGY	317
BIBLIOGRAPHY	323

List of Figures

Figure 1: Idiosyncrasies in Previous US Drone Strikes	219
Figure 2: Three Types of Pre-Attack Self-Defence.....	271
Figure 3:Theoretical Framework - Examining the Imminence Criteria of the Soleimani Strike	273
Figure 4: Legitimacy Formula.....	275

Acknowledgements

I would like to express my sincere gratitude to Prof Richard J. Aldrich and Dr Alexandra Homolar. This dissertation would not have been possible without their invaluable guidance, advice, input and encouragement. I am honoured and humbled to have had the opportunity to research under their expert supervision. Thank you for believing in me, challenging my work, and taking a chance on this project. I am forever indebted to you both for your kindness and your support. Also, thank you for not setting up an email filter to block my random 2:00 am queries—although I know it was very tempting.

I would also like to thank my examiners, Dr Rory Cormac from the University of Nottingham and Dr Christopher Moran from the University of Warwick. Thank you for not failing me.

Special thanks also go out to the Department of Politics and International Affairs, the Doctoral College, and Dr Ece Özlem Atikcan for their considerable assistance in the submission of this dissertation.

I also want to acknowledge and thank my former professors at the University of Waterloo. In particular, Dr Anna Esselment, Dr Jim Blight and Dr Janet Lang, whose collective mentorship has guided me throughout my academic career culminating in this doctoral program. Thank you.

Finally, I would like to thank my friends: Monica, Joey, Phoebe, Chandler, Ross, and Rachel, for being there for me throughout this programme—unlike my sanity or my will to live.

Dedication

Like all of my achievements, I dedicate this dissertation to my parents, Niculina and Ionel Vlad. You are my role models, my biggest supporters, and the two people I love most in this world. Thank you for always believing in me even when I did not believe in myself, and for teaching me the value of education, sacrifice and perseverance. From my very first school project, to the submission of this doctoral dissertation—you were always right beside me, cheering me on. I love you both more than you will ever know.

I also wish to dedicate this project to my grandparents: Ioana (Nela) Stanciu, Nicolae (Tataie) Stanciu, Eugenia (Ica) Vlad, and Vasile (Ticu) Vlad. Though some have since passed on, I know they were with me in spirit throughout this entire journey.

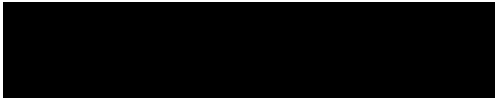
I thank you all, from the bottom of my heart, for everything you have done and continue to do.
Vă mulțumesc, și vă iubesc.

Declaration

I hereby certify that I am the sole author of this dissertation, entitled ‘Striking the Shadow Commander: Ascertaining the Legitimacy of the Drone Strike on Gen. Qasem Soleimani Through an Examination of the U.S. Claim to Pre-Attack Self-Defence.’

All material contained herein is my original work, except where reference or acknowledgement has been made per standard academic referencing practices. I affirm that I have exercised the highest possible care in both research and reference to the work of others and that, to the best of my knowledge, this dissertation does not infringe on copyrights or intellectual property rights.

I further declare that this dissertation has not been submitted for publication or a higher degree at any other University or Institution. I certify that this is a true copy of my dissertation, including any final revisions, as approved by my supervisors and the dissertation committee.

A solid black rectangular box used to redact the signature of the author.

Ruxandra Oana Eugenia Vlad

Warwick ID:1862864

Date: 15 December 2020

Abstract

The targeted killing of Gen. Qasem Soleimani set off a chain of events that nearly incited a significant international conflict. Spearheaded by the Central Intelligence Agency, this counter-terror mission sought to eliminate Soleimani on the grounds that he posed an ‘imminent threat’ to the United States. Following the strike, the US claimed that it had acted legitimately by citing adherence to self-defence under customary international law. However, this justification for the preemptive use of force would quickly unravel when it was determined that no such ‘imminent’ threat could be corroborated. Further doubt was raised when several US officials confirmed that US President Trump had signed what amounted to Soleimani’s death warrant seven months before the strike. When it was reported that another Iranian official was unsuccessfully targeted in Yemen on the same day as Soleimani, it became clear that there was rather more to the story than what the US had disclosed. This dissertation seeks to interrogate some of these issues.

The purpose of this dissertation is to determine whether the US claim to pre-attack self-defence was legitimate. Comprehensive analysis based on process tracing was undertaken deploying qualitative approaches. Real-time information on the Soleimani strike was combined with critical conclusions extricated from scholarly works on the subject to develop a framework capable of ascertaining the Soleimani strike's legitimacy. Thus, this dissertation seeks to contribute to our understanding of pre-attack self-defence doctrine by developing a framework capable of determining the legitimacy of operations similar to that of the Soleimani strike.

In sum, this dissertation determined that the US strike on Gen. Soleimani did not sufficiently adhere to pre-attack self-defence conditions based on available intelligence. This project further reaffirms this topic's growing importance and raised further issues for future research, including the urgent need for a minimum legal threshold of imminence necessary to permit such attacks.

Abbreviations

ABC	American Broadcasting Company
ACLU	American Civil Liberties Union
AUB	American University of Beirut
AUMF	Authority for Use of Military Force
CAS	Covert Action Statute
CBS	Canadian Broadcasting Corporation
CI	Counter-Intelligence
CIA	Central Intelligence Agency
CNN	Cable News Network
CSIS	Center for Strategic and International Studies
CT	Counter-Terrorism
DEW	Directed Energy Weapon
EO	Executive Order
FBI	Federal Bureau of Investigation
GMF	German Marshall Fund
GOP	Grand Old Party, aka the US Republican Party
HVT	High Value Target
ICC	International Criminal Court
ICJ	International Court of Justice
ICPVTR	International Centre of Political Violence and Terrorism Research
ICTY	International Criminal Tribunal for the former Yugoslavia
IRGC	Islamic Revolutionary Guard Corps
IS	Islamic State
ISI	Inter-Services Intelligence of Pakistan
ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Syria
JSOC	Joint Special Operations Command
MAGA	Make America Great Again

NBC	National Broadcasting Company
NIO	National Intelligence Officer
NSA	National Security Agency
NSDD	National Security Decision Directives
NSS	National Security Strategy
PAIS	Politics and International Studies
PMF	Popular Mobilization Forces
PTSD	Post-Traumatic Stress Disorder
QF	Quds Force
RUSI	Royal United Services Institute
SUV	Sport Utility Vehicle
UAV	Unmanned Aerial Vehicle
UK	United Kingdom
UN	United Nations
US	United States
USAF	United States Air Force
USS	United States Ship
WMD	Weapons of Mass Destruction

Dissertation Word Count

Exclusive of front matter, bibliography, appendix and footnotes, this dissertation is about 80,000 words, thus falling within the limit that the University of Warwick has set for doctoral dissertations in the Social Sciences.

Chapter 1: Introduction

In January of 2020, the international community bore witness to a dangerous political game instigated by the United States. Political assassinations were surreptitiously planned and executed by lethal drone. Covert missions were entrusted to foreign double agents. Political tensions escalated, leading to a barrage of retaliatory missile strikes and a dangerous fog of war. Then came the downing of a passenger jet, followed by further cover-ups, protests, and deception, culminating in the looming threat of overt—nuclear—war. Perhaps only imaginable by Hollywood, the swift fallout that took place in the wake of the lethal US drone strike on Iranian General Qasem Soleimani¹ served as an unnerving start to the new decade and posed important questions for policymakers, lawyers and international ethicists. However, the structure of international law is deeply embedded in states as a primary source of legitimacy, and this dissertation critically interrogates the justifications offered by the Trump administration in using deadly force against the Iranian General.

Long ago, Sun Tzu warned that ‘all warfare is based on deception.’² As witnessed during the one-term Trump presidency, shifting government statements on the Soleimani strike also embodied this principle. The US government touted the killing of the Iranian General as yet another success of its counter-terror program. However, critics were not so easily convinced, even though both the George W. Bush and Obama administrations had previously contemplated the elimination of Soleimani.³ This is because, over the last twenty years, the US counter-terrorism programme has become ever more comfortable conducting dangerous and controversial missions overseas. Nevertheless, the strike on Soleimani was unlike past US drone strikes. This is because he was not just another non-state target readily described as a terrorist. Soleimani was a General and an active foreign government official. Moreover, he represented a country that was not at war with the United States, and thus by the letter of international law, he should have been afforded protected personnel status.

¹ See Michael Crowley, Falih Hassan and Eric Schmitt, ‘U.S. Strike in Iraq Kills Qasim Suleimani, Commander of Iranian Forces,’ *The New York Times*, 02 January 2020.

² Sun-Tzu and Samuel B. Griffith, *The Art of War* (Oxford: Clarendon Press, 1964).

³ Zeke Miller and Julie Pace, ‘US Long Watched Soleimani, But Feared Risks of a Strike,’ *AP News*, 04 January 2020.

Still, for the Trump administration, Soleimani was viewed as nothing more than a terrorist. This assessment was bolstered by unsubstantiated claims that the Iranian General had been engaged in active terror plots targeting the United States and its allies. Nevertheless, this classification of Soleimani as an ordinary terrorist, eclipsed his rank as General, thus allowing the US to justify his elimination in supposed accordance with the provision of ‘right to self-defence,’ afforded under international law.⁴ As Trump stated, ‘Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel, but we caught him in the act and terminated him... We took action last night to stop a war. We did not take action to start a war.’⁵ It should be noted that the General’s terroristic affiliations are not a subject of inquiry within this dissertation. Instead, it is the line of defence adopted by the US government to justify this operation, which will be examined closely.

At the heart of this doctoral dissertation lies the question of whether, and to what extent, the customary international law of pre-emptive self-defence can lend legitimacy to the Trump administration’s assertion that the US drone strike against Gen. Soleimani was necessary and justified. Over the last twenty years, beginning with the Bush Doctrine, the United States has emphasized the pre-emption of national security threats through military force.⁶ In the case of the drone strike against the Iranian General, the US government claimed that it acted in accordance with the customary international law of self-defence to prevent an instant and otherwise indivertible impending attack—as the George W. Bush administration had done in the run-up to the War against Saddam Hussain’s Iraq. However, in the aftermath of the killing of Soleimani, the Trump administration was widely seen as providing and using insufficient evidence to establish whether the General had indeed posed an imminent threat to warrant his immediate execution. Even high-ranking US officials in the ‘Gang of Eight’—eight leaders within the United States Congress from both Chambers and parties who are briefed on classified intelligence matters by the

⁴ Mehrnusch Anssari and Benjamin Nußberger, ‘Compilation of States’ Reactions to U.S. and Iranian Uses of Force in Iraq in January 2020,’ *Just Security*, 22 January 2020.

⁵ Donald J. Trump, ‘Remarks on the Death of Islamic Revolutionary Guard Corps Major General and Quds Force Commander Qasem Soleimani of Iran in Palm Beach, Florida,’ *The American Presidency Project*, 03 January 2020.

⁶ See National Security Council, ‘The National Security Strategy of the United States of America,’ *National Security Council Archives*, (2002) p. 15.

executive branch, all of whom possess the highest of clearances—were left disappointed by the ‘weak’ intelligence briefings given by the Trump administration. Several Members of Congress stated that the intelligence they examined showed no evidence that the Iranian General posed an imminent threat. The revelation that US President Donald J. Trump had signed Soleimani’s death warrant seven months before the January 2020 strike⁷ appeared to only further weaken the US’ claim that Soleimani posed an imminent threat at the time of his death.

Predictably, and perhaps in an attempt to quell the domestic uproar incited by the targeted killing of an Iranian government official on sovereign Iraqi soil, the US president turned to Fox News. In a nationally televised interview, Trump maintained that he ‘believed’ the alleged threat was directed at several US embassies in the Middle East.⁸ This statement was not only uncorroborated, but it seemed to be a new piece of information for his administration—many of whom were blindsided by the revelation, for neither the Secretary of State, the Secretary of Defence, nor the heads of the CIA or NSA knew anything of such threats.⁹ It should be emphasized here that these are career professionals whose role both requires and entitles them to be highly informed about national security threats against the United States and, having access to compartmentalized sources and raw intelligence, convey relevant information on impending national security threats to the White House. Remarkably, several embassy officials confirmed that they were similarly unaware of any security risks before the targeted killing of Soleimani.¹⁰

The initial concern over the lack of evidence of an impending attack on American embassies or its national security more broadly was amplified as an increasing number of details about the drone strike on Soleimani emerged. For example, the U.S. chose to carry out the lethal strike on Soleimani in Iraq, a third-party state. The killing was carried out without the latter’s

⁷ See Carol E. Lee and Courtney Kube, ‘Trump Authorized Soleimani’s Killing 7 Months Ago, with Conditions,’ *NBC News*, 13 January 2020.

⁸ See Alex Pappas, ‘Trump Tells Fox News’ Laura Ingraham “Four Embassies” Were Targeted in Imminent Threat from Iran,’ *Fox News*, 10 January 2020.

⁹ See Karoun Demirjian, Karen DeYoung, and Shane Harris, ‘Trump’s Team Offers Mixed Messages About Imminent Attack from Iran As Justification for Killing Soleimani,’ *Washington Post*, 07 January 2020.

¹⁰ See Kylie Atwood, ‘State Department Security Officials Weren’t Notified of Imminent Threats to U.S. Embassies,’ *CNN*, 14 January 2020.

knowledge or consent, and in its aftermath, Iraq voted to expel American troops from its territory. How does this violation of another state's sovereignty sit alongside the US claim to self-defence? It is assumed that the US would seek to demonstrate, in some form or another, adherence to the customary law of pre-emption. Yet since the strike took place in a foreign country without its prior accord, should the Trump administration (in their quest for legitimacy) not also seek to justify its decision to violate the sovereignty of Iraqi airspace and, indeed, other aspects of Iraqi national law? We might note here that the mission against Osama Bin Laden in Pakistan in May 2011 raised similar jurisdictional questions.

A series of perplexing events related to the Soleimani operation slowly surfaced, raising additional questions about the Trump administration's legitimisation strategy. Quite simply, Soleimani was not the only person the US targeted that day. In Yemen, another Iranian government official, Abdul Reza Shahlaei, was targeted by a US drone on the same day, and within the same timeframe, as Soleimani.¹¹ He narrowly escaped as the drone circled back and then killed the wrong man in a case of mistaken identity. The US government has since chosen not to comment on this failed mission. Instead, the Trump administration focused on the 'successes' of the Soleimani operation. What does this say about the decapitation strategy showcased by the Soleimani strike? What does the revelation of a failed second-strike cover-up say about the reasoning behind the preemptive decapitation counter-terror strategy showcased by the Soleimani strike? Was the Iranian General the only one to pose a risk to the US national security? If so, then why target the second official in Yemen? Nonetheless, if the second official in Yemen was also critical to the supposed 'imminent threat' plot that Soleimani was a part of, how can the overall operation be viewed as a success when one key player remains alive, and supposedly operational?

As though lifted from the pages of Lewis Carroll's *Alice in Wonderland*, the Soleimani strike could easily be defined as an event that keeps getting 'curiouser and curiouser' the deeper one goes into examining the rationale and legitimisation behind the targeted killing. This remains unsurprising when we consider the chaotic conduct of national security affairs in the latter half of

¹¹ See Eric Schmitt, Edward Wong, and Julian E. Barnes, 'U.S. Unsuccessfully Tried Killing a Second Iranian Military Official,' *The New York Times*, 10 January 2020.

the Trump presidency and now chronicled by John Bolton in his recent weighty memoir.¹² However, the main purpose of this dissertation is not to reconstruct historical events or engage in process tracing, but instead to examine the lethal drone strike on General Soleimani to determine if the US operation was legitimately undertaken in accordance with the legal provisos set forth within the customary international law of pre-attack self-defence.

At the moment, there is a growing need for clarity and objective evaluation on the Soleimani strike. Scholars within International Relations, in addition to a broad range of international legal experts, government officials, and the media have voiced their concerns about inconsistencies regarding the US's justification for the strike. Despite a growing need for greater clarity, academic analyses of the Soleimani strike have remained limited. There is already a substantial normative literature around both drones specifically and assassination as a tool of statecraft more generally, so this dissertation will not replicate this but instead aim to build upon it by providing an objective evaluation of the Soleimani strike. There is already a substantial normative literature around both drones specifically and assassination as a tool of statecraft more generally, and there seems no need to replicate this. Accordingly, international law will constitute the primary prism for the analysis in this dissertation.

Hence, there are four key literary contributions furthered in this dissertation. Firstly, this research will mark the first scholarly attempt to categorise the Soleimani strike under the existing legal parameters of pre-attack self-defence. Secondly, this categorization will attempt to put to test the assertions of academics who have claimed that the CIA-led US drone programme is slowly losing authority and reputation by violating foreign laws or lying about compliance. Thirdly, contrary to the current US president's assertions, this project would investigate the prevailing scholarly view that (i) evidence of imminence, (ii) sufficient intelligence, (iii) true and credible government speeches, and (iv) integrity and diplomacy are all needed to prove the validity of attacks justified in accordance with the law of pre-attack self-defence. Fourthly, this dissertation will examine how the Soleimani attack differs from conventional drone strikes, particularly those

¹² See John Bolton, *The Room Where It All Happened: A White House Memoir*, (New York: Simon and Schuster, 2020).

undertaken during leadership decapitation operations, in order to assess what future impact this could have on the US drone programme.

Concepts drawn from seminal legal works on the topic will also be employed and combined with established texts on pre-attack self-defence customary law. These will then be used to develop a framework capable of analyzing the Soleimani strike's legitimacy in a practical and scholarly way. As such, the criteria included in this dissertation's theoretical framework was inspired by the prerequisite conditions stipulated in the customary international law of pre-attack self-defence, as well as current military practices, and proposals found in the seminal works of Michael W. Doyle, Abraham D. Sofaer and Michael L. Walzer.¹³ Accordingly, the criteria included in the main theoretical framework are founded upon an examination of the: (i) nature and severity of the threat posed, (ii) potential destruction the threat could cause if allowed to materialize, (iii) the urgency of the threat and the probability of the threat materializing as well as the risk in waiting, (iv) whether alternatives have been exhausted, and (v) the degree of intelligence disclosure. Further elaboration on the framework would be premature at this point as the theoretical framework will be introduced and applied in later chapters, following discussion on current literature fields, relevant historical counterterror operations, and the comprehensive analysis of the Soleimani strike. Thus, only a broad brushstroke on this framework's criteria has been included here. At the end of this dissertation, the theoretical framework will be presented in table format. This visual aid is included with the goal of improving the clarity and transferability of this framework to similar future pre-attack self-defence operations.

It is also worthwhile to note that there are ten established orthodoxies or wisdoms which this project seeks to overturn. First is the belief that international law is outdated and therefore incapable of addressing, much less constraining, modern armed conflicts. Second is the view that counterterrorism operations are beyond the scope or purview of domestic or international law. Third, that pre-attack self-defence operations cannot be challenged nor regulated by domestic powers. Fourth, that the United Nations and its regulatory bodies, including the UN Security Council, should not be consulted when undertaking counterterror strikes as the world is in a

¹³ These authors, and their respective works, will be discussed and examined in greater detail within the methodology chapter of this dissertation.

perpetual war with an unrelenting and unpredictable enemy. Fifth, no intelligence, proof, or evidence should be required of states who justify their drone strikes in accordance with the practice of pre-attack self-defence. Sixth, that the US, by virtue of its reputation and hegemonic power, should always be considered right; and its actions be inferred as legitimate, thus given free rein to conduct its war on terror as it sees fit. Seventh, that more transparency in covert operations is always a good thing. Eighth, that leadership decapitation is an effective strategy regardless of the terror organization. Ninth, that state sovereignty can be suspended or infringed upon during counterterror operations. And tenth, that diplomacy is no longer a viable nor effective foreign policy strategy.

Accordingly, this project will seek to contribute to the existing literature on pre-attack self-defence, the US counter-terror drone program, and the new subject of the Soleimani strike, which may well become something of a legal precedent. The findings and conclusions contained within this dissertation intend to have both scholarly and practical applications. The expectation is to provide a normative framework capable of determining the legitimacy of similar future operations before their execution, in the hope of curtailing the negative political fallout experienced following the Soleimani strike.

This dissertation has been organized into five main sections. The first will introduce the methods chosen for this project. The second will review the relevant available literature on the topic. The third will introduce, discuss and analyze the main case study. After this is completed, the fourth section will deploy the data from the preceding three sections to develop three frameworks. The aim will be to classify the Soleimani strike by comparing and contrasting the known information on the strike with the criteria and parameters identified in the three frameworks discussed above. The fifth and last section will propose recommendations for similar operations to avoid the negative consequences and political fallout that plagued the Soleimani strike. As indicated above, the following section will now present the methodology employed in this project

Chapter 2: Methodology

Methodological Approach

The purpose of this chapter is to identify, discuss and explain the methodological approaches selected for this dissertation. A discussion of the theoretical framework, design strategies and philosophical assumptions underpinning this project will be undertaken to achieve this. One central question motivated the creation of this dissertation. This section will introduce this main research query, in addition to three additional sub-questions. The primary research inquiry for this project is as follows.

- (i) Does the customary international law of pre-emptive self-defence lend legitimacy to the US drone strike against Gen. Soleimani?

Three additional questions were also considered during the creation of this dissertation. Namely,

- (ii) What criteria must be sufficiently demonstrable to ascertain the legitimacy of the Soleimani strike?
- (iii) Does legitimacy rely on proof of imminence?
- (iv) Would a lack of available intelligence and an inability to adhere to the criteria mentioned above affect the operation's perceived legitimacy, and by extension, the broader US UAV counterterror program?

This dissertation's research questions sought to build upon existing knowledge in the field by addressing under-developed or superficial areas in the existing literature. In other words, this dissertation's primary purpose was to use the recent Soleimani strike to understand better the problems associated with the practice of pre-attack self-defence in a real-world context. Once the problem was understood, the goal was to build upon existing knowledge by developing and proposing a framework capable of ascertaining the legality of such operations before their implementation.

The corresponding purpose for this was to determine whether or not the US drone strike on Soleimani was legitimate, as the US government has adamantly asserted. This project sought to address the research objectives and questions identified at the onset of this study. These questions, which were investigated through qualitative means, were mostly open-ended. This question form allows a researcher to gain valuable information or knowledge that was not anticipated at the project's commencement. As such, this served as an essential check on the design of this project, considering that qualitative research often suffers from researcher bias if the research design is too narrowly focused on theory testing.¹⁴

Additionally, this dissertation was conducted by using available English-language sources and resources. Understandably, this gives this dissertation a rather Western perspective. Thus, to offer balance, global literature on international laws was employed and referenced to gain a more holistic approach to the practice of pre-attack self-defence and the case study undertaken. Nevertheless, this project recognizes that the Iranian perspective was much less prominent due to the language barrier and the inaccessibility of resources and information. A study of this subject from an Iranian perspective would be very welcome, but most likely also rather difficult. Nevertheless, this focus on Western perspectives aligned with this project's purpose. Thus, it was necessary to fully comprehend current US practices and policies to propose practical ways to improve the legality and legitimacy of its existing counterterrorism program. This included the machinations of its legal, political and military structures to understand better what strategies needed to conform to the status quo. Thus, a western focus was required for these recommendations to be made applicable to the US context.

A critical realist perspective, grounded in international law, inspired the ontological approach taken in this dissertation. Although certain assumptions about the nature of social reality may be outdated, particularly when addressing matters of counterterrorism and the advanced defence technologies employed within them. International law nonetheless provides an objective lens through which to assess and analyze events without the risk of self-serving interpretations or

¹⁴ Greg Guest, Emily E. Namey and Marilyn L. Mitchell, *Qualitative Research: Defining and Designing*, in *Collecting Qualitative Data: A Field Manual for Applied Research* (London: Sage Publications, 2013), p. 21.

skewed narrative constructions. This is of particular importance, especially since this dissertation recognizes the existence of multiple realities of legitimacy. So, in order to properly interpret and assess whether the reality (narrative) predicated by the US after the Soleimani strike was accurate, an enduring, objective and widely respected perspective needed to be taken.

Once the ontological approach was determined, then an interpretivist view, originally espoused by Mark Bevir and R.A.W. Rhodes, was adopted.¹⁵ Considered by many to be the leading exponents of interpretive political science in the United Kingdom, Bevir and Rhodes posited that an interpretivist perspective ‘may be used to advance the study of governance, high politics and public policy.’¹⁶ Quite recently it seems, several authors have begun to examine the merit of interpretivist approaches on the study of international law. Başak Çali, for instance, reasoned that interpretivism may not only be relevant, but it may also be a requisite within normative debates about international law. She advised that interpretivism be included in current debates, and furthermore recommended that future scholarly work on the subject be undertaken to develop a substantive interpretivist account of international law.¹⁷ In the years that followed, several publications sought to do just that.

Colin Hay, a professor of politics at the University of Sheffield, conducted his own research on the issue, with the goal of gauging ‘the nature, distinctiveness and significance of the narrative turn in public administration.’ Inadvertently, it seems, his research resulted in a significant ancillary finding which proposed that a broadening of the interpretivist agenda would only really be effective if it included a focus on institutional contexts and beliefs. These ‘contexts and beliefs’ are formed in part by the actions, influences and ideas of actors within them. Thus, an interpretivist examination of international law requires a concurrent analysis of the institutions and actors which

¹⁵ See Mark Bevir and R.A.W. Rhodes, ‘Interpretivism and the Analysis of Traditions and Practices,’ *Critical Policy Studies*, Vol. 6, Issue 2, 08 August 2012: pp. 201-208.

¹⁶ Nick Turnbull, *Interpreting Governance, High Politics and Public Policy*, Routledge, 2016: pp. 15-226; see also David Marsh et. al., ‘Two Cheers for Interpretivism: Deconstructing the British Political Tradition,’ *Australian Journal of Public Administration*, Vol. 73, Issue 3, 23 September 2014: pp. 340-348.

¹⁷ Başak Çali, ‘On Interpretivism and International Law,’ *European Journal of International Law*, Vol. 20, Issue 3, August 2009: pp. 805-822.

bolster them.¹⁸ To achieve this within this dissertation, a narrative analysis of individual actions within their respective institutions was undertaken. For instance, both the US and Iranian letters to the UN Security Council were discussed and analyzed to better understand how each state justified their actions in accordance with the customary international law of pre-attack self-defence. Yet even an interpretivist examination of such letters raises certain issues.

Mark Tushnet, a Harvard Law professor, posited that interpretivism is a double-edged sword. If used correctly, this analytical lens would allow lawmakers, judges, and even the general public to decide the legitimacy and lawfulness of cases based upon their adherence or violation of certain laws and norms. However, 'interpretivism [requires] judges... [to] decide cases in accord with the intent of the framers.' But what if the framers of certain laws could not have envisaged certain modern stratagems or weapons which have now become conventional? How could the intent of the framers be deduced in those circumstances?¹⁹ Ultimately, Tushnet reasoned, interpretivism relies on a certain degree of presupposition. This, however, requires an objective evaluation to ensure that an interpretivist analysis is not clouded by self-serving ideals, notions or conditions.²⁰

Malcolm D. Williams, a sociology professor at Cardiff University, suggested a safeguard for interpretivist analyses. He posited that 'interpretivism must employ a special kind of generalization,' called 'moderatum.' The purpose of this would be to set up limits on interpretivism.²¹ By doing so, presuppositions could not be swayed by minor details in an attempt to arrive at subjective, or self-serving conclusions. By generalizing the situation, assessors of legitimacy would have to look at the 'bigger picture' and ascertain whether the ends truly do justify the means. It would be naïve to believe that such evaluations could occur objectively, unhindered

¹⁸ Colin Hay, 'Interpreting Interpretivism Interpreting Interpretations: The New Hermeneutics of Public Administration,' *Journal of Public Administration*, Vol. 89, Issue 1, 16 March 2011: pp. 167-182.

¹⁹ See Nick Turnbull, 'Interpretivism and Practice in Governance Studies: The Critique of Methodological Institutionalism,' *British Politics*, Vol. 6, 30 June 2011: pp. 252-264.

²⁰ Mark V. Tushnet, 'Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles,' *Harvard Law Review*, Vol. 96, No. 4, February 1983: pp. 781-827.

²¹ Malcolm David Williams, 'Interpretivism and Generalisation,' *Sage Journals*, Vol. 34, Issue 2, 01 May 2000: pp. 209-224.

by external factors. Given the complexity of modern communication channels, and the voracity of media dissemination, our understanding of ‘political reality’ changes frequently and somewhat unpredictably.

Shaul Shenhav, a political science lecturer at the University of Jerusalem, has extensively researched how our collective (re)directions of thought influence the creation and perpetuation of ‘political realities.’ Shenhav argued that parallel narratives, competing realities, and cultural differences contribute to these range in perspectives. But, as the author posits, there could exist a ‘possible coexistence between different political narratives,’ especially if these are rooted, or proven to adhere to, greater institutional constructs, like those found within international laws or norms.²² To avoid issues associated with malleable political realities, this dissertation, and the analyses contained herein, are reliant on international law for this very reason. While international law may have played a key role in the foundational aspects of this project, the narrative analysis which followed was facilitated by a study of media discourse and public opinion.

According to William Gamson, a professor of sociology at Boston College, there are two parallel, yet nonetheless complimentary, systems of constructing meaning. These narratives are facilitated and disseminated through the media, through one or more channels—including television reports, newspapers, editorials and syndicated opinion columns. Public opinion is thus formed when a certain narrative is repeatedly broadcast. Thus, meaning is constructed when media discourse and public opinion intersect.²³ However, this is accompanied by certain risks, as competing narratives, shifting stories, or even a modicum of public mistrust can raise doubt in these constructed narratives, thus undermining their purpose. It is for this reason that narratives must be carefully constructed and disseminated, particularly when it comes to matters of foreign policy, or cases that have had contentious outcomes.²⁴ The US strike on Soleimani thus serves as

²² Shaul R. Shenhav, ‘Political Narratives and Political Reality,’ *International Political Science Review*, Vol. 27, No. 3, July 2006: pp. 245-262.

²³ William A. Gamson and Andre Modigliani, ‘Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach,’ *American Journal of Sociology*, Vol. 95, No. 1, July 1989: pp. 1-37.

²⁴ See Roxanne Lynn Doty, ‘Foreign Policy as Social Construction: A Post-Positivist Analysis of U.S. Counterinsurgency Policy in the Philippines,’ *International Studies Quarterly*, Vol. 37, No. 3, September 1993: pp. 297-320.

an interesting case. Despite its international reputation and access to countless media channels, the US still failed to construct a strong narrative regarding the necessity and legitimacy of the strike. As it will be shown later, strong narratives can have the power to sway public opinion in order to confer legitimacy on even the most contentious of circumstances. However, as the US case has shown, weak narratives, particularly those plagued by shifting statements, lack of intelligence, mounting suspicion, aggressive and confrontational strategies, and a general nonchalant attitude towards international law, can have quite the opposite effect.

Philosophical Underpinning

Knowledge builds upon existing knowledge. However, the available literature on the US ‘targeted killing’ of Iranian General Qasem Soleimani focuses predominantly on the effects this has had on American politics or even US-Iran relations. Remarkably, although there is a growing pool of literature on the event, it seems as though the need to legally classify the strike (within the parameters of the three types of pre-attack self-defence) has been overlooked. This dissertation intends to contribute to the increasing depth of literature by offering a new perspective and method to evaluate the Soleimani strike's legitimacy.

This dissertation will compare and contrast available intelligence with the legal requirements of anticipatory, preemptive and preventative self-defence, to establish whether the US strike on Soleimani was legitimate. In addition to these legal provisos, additional criteria derived from the observations, findings, and key scholarly recommendations will also be employed. Additionally, the condition of imminence will similarly be examined to determine if there was sufficient evidence to warrant a strike in self-defence. The literary contribution of this dissertation will be four-fold. First, this project will mark the first scholarly attempt to classify the Soleimani strike within the current legal parameters of pre-attack self-defence. Second, this classification will seek to test the claims of scholars who have argued that the CIA-led US drone programme is steadily losing legitimacy and credibility by infringing international laws or dissembling about adherence. Third, this project will further attempt, contrary to the claims made by the current US president, to examine the predominant scholarly position that (i) proof of imminence, (ii) adequate intelligence, (iii) genuine and reliable government statements, and (iv)

credibility and diplomacy, are all necessary to prove the legitimacy of attacks justified as pre-attack self-defence fundamentally. Fourth, this dissertation will investigate how the Soleimani strike contrasts from ‘normal’ drone strikes and even the strategy of leadership decapitation to determine what effect this may have on the US drone programme going forward.

Therefore, this dissertation straddles two fields of literature, both of which are tied to international law. These include the scholarly works on pre-attack self-defence and the many general studies of the US counterterror drone program. The conclusions realized in this project will aim to have both strategic and literary applications.

Several works are of particular importance in positioning this dissertation, proving important conceptual waypoints. This project has sought to build upon the philosophical approaches, assumptions and conclusions advanced by Michael L. Walzer, Abraham D. Sofaer, and Michael W. Doyle. Each scholar was purposely chosen for their significant contributions to the fields of preemption, state-sponsored self-defence, and international conflict. These works were of particular importance during the creation of this project’s theoretical framework. Each scholar, and their respective contributions, will be briefly introduced and discussed below.

Abraham D. Sofaer worked as a legal advisor to the US Department of State, during which time he was responsible for US-Iran negotiations at the ‘Iran/US Tribunal’ in The Hague. Sofaer has influenced the framing of this dissertation for four main reasons: (i) he was a legal scholar with extensive knowledge of international laws, (ii) he was directly involved in US-Iran negotiations and had first-hand experience with practical solutions, (iii) he was American, and therefore more aware of bureaucratic operations during his service in the Department of State, and (iv) two of his most recent books exclusively examined the Iranian threat and the issue of preventative force. Both books proved essential during the research and development stages of this dissertation. In 2010, Sofaer published a landmark text which sought to provide a practical guide for scholars studying preventative forces and issues resulting from actions taken in this manner. It built upon the findings of the Stanford Task Force on Preventative Force and examined the role of the UN in the realm of preventative force. The book also addressed the concept of legitimacy and discussed its growing importance in foreign policy.

Sofaer posited that '[e]valuations of legitimacy are ultimately based on the aggregate impression of the views of all relevant actors regarding a proposed or implemented action.'²⁵ In the absence of a universal definition, legitimacy is therefore conferred by majority opinion. In 2009, Jeremy Greenstock, former UK representative to the United Nations, addressed legitimacy during a discussion on the UK's involvement in the 2003 invasion of Iraq. He concurred and noted that although the invasion of Iraq might have been legal, this did not necessarily make it legitimate.²⁶

Thus, Sofaer demonstrated the need for greater research on the rather complex concept of legitimacy—particularly when examining the issue of preventative force. Accordingly, the literature review and theoretical framework of this project include and emphasize the importance of legitimacy. Arguably, legitimacy may be more important than the legality.²⁷ Yet, beyond the discussion on legitimacy, Sofaer also addressed three critical questions. Namely, (i) 'are there any risks or limitations associated with preventive attacks?' (ii) 'can states who do not seek or receive the approval of the UN Security Council still have their preemptive actions viewed as legitimate?' and (iii) 'would a defined set of procedures, standards or policies been able to enhance the perceived legitimacy of actions undertaken in pre-attack self-defence?' All of these questions are considered and discussed in this dissertation. However, the last question was given more consideration since it accorded most closely with the main research question.

Sofaer wondered if a set of standardized criteria might regulate the preemptive actions of states somewhat better. Presently, there is an increasingly nonchalant attitude towards rules and laws since no universal set of conditions has been developed, informing states on the proper and legitimate ways to employ preemptive force. Moreover, this question, and its underlying suggestion for further scholarly study on the issue, inform the theoretical framework employed in this dissertation. Three short years later, Sofaer published another ground-breaking work. This 2013 publication became a significant point of reference. It was entitled, *Taking on Iran: Strength,*

²⁵ Abraham D. Sofaer, *The Best Defence? Legitimacy and Preventive Force* (Stanford: Hoover Institution Press, 2010), p. 107.

²⁶ See Jeremy Greenstock, 'Chilcot Inquiry,' *United Nations*, November 2009.

²⁷ See for example the NATO intervention in Kosovo in 1999.

Diplomacy and the Iranian Threat, and examined how different presidential administrations dealt with the Iranian regime. The purpose of this historical investigation was to determine which tactics might still work at present. Unsurprisingly, the author concluded that several past strategies had been unproductive. Sofaer posited that for the US to effectively address the Iranian threat, realistic negotiation tactics needed to be undertaken. Using historical-comparative case studies, he suggested that the negotiation tactics used between the US and the Soviets in the 1980s might prove useful if applied to the current Iranian regime.

Sofaer also advised the US to involve Iranian government officials in discussions about effective counterterrorism policies. In doing so, the regime might feel less ostracized from the international community, which might also deter it from forging alliances with non-state terror groups. By tracing the historical origins of US-Iran relations, he provided readers with a greater understanding of the current state of affairs between the two states, emphasizing Teheran's long memory stretching back to the tumultuous events of 1953. It also provided much-needed context to the rising tensions that have manifested in recent years.²⁸

The second key scholar whose concepts inform this dissertation is Michael W. Doyle, an American Professor of International Relations at Columbia University, who previously taught at the University of Warwick. During his career, he served as Special Adviser to UN Secretary-General Kofi Annan. These positions allowed him to observe and participate in political issues in both a scholarly and professional manner. It should be noted that having both a practical and theoretical perspective is critical to effectively analyzing recent counterterror operations. *Striking First: Preemption and Prevention in International Conflict* is an essential text for those studying preemption in international conflict. Legal practitioners and political scholars overwhelmingly praised the book. For example, Ian Shapiro, professor of Political Science at Yale University, has called it

the best account that has yet been developed of the conditions under
which preemptive action against threats to American national security

²⁸ There are many texts on the events of 1953 but see for example: Stephen Kinzer, *All the Shah's Men: The Hidden Story of the CIA Coup in Iran* (New York: Wiley, 2003); Mark J. Gasiorowski and Malcolm Byrne. (ed.) *Mohammad Mosaddeq and the 1953 Coup in Iran* (Syracuse, NY: Syracuse University Press, 2004).

can be justified and of the form such action must take if it is to garner legitimacy at home and abroad.²⁹

Others called the book ‘ground-breaking’ and ‘indispensable,’ including scholars like Michael L. Walzer, who will be introduced later in this section.

Doyle also recognized that separately, national security strategies such as the Bush Doctrine or legal frameworks such as international customary law would be grossly insufficient to constrain or even regulate state behaviour. In turn, this implied that a combination of the two might suffice, albeit this seems improbable. This dissertation goes one step further by enlisting a third factor: scholarly prescriptions. If existing military doctrine and international law were unable to address the issue, perhaps another perspective needs to be considered and applied. Although scholarly debate often results in theoretical conclusions, it can also offer strategic and practical recommendations. Moreover, US foreign policy, perhaps more than the foreign policy of any other state, often turns to international relations scholarship not only for ideas but also for legitimacy, signalled by its love affair with high-powered think tanks and the extensive consultancy work of leading academics.³⁰

Second, Doyle acknowledged that the lack of defined categories between the three types of pre-attack self-defence had afforded the US the opportunity to claim a more favourable classification post-operation. Accordingly, the post-strike manipulation of discourse is discussed at length in later chapters. This inadequacy of definitional parameters also served as an interesting scholarly observation. Accordingly, a table was generated, enlisting international law and existing literature, which endeavoured to clarify the differences between each form of pre-attack self-defence – this is discussed later. Doyle also analyses the importance of the UN in overseeing state-sponsored actions preemptively undertaken in self-defence. Beyond oversight, the UN Security Council, for instance, can enforce international law, regulate the use of preemptive strikes and verify the claims of states, thus objectively imparting legitimacy. Subsequently, this fact was

²⁹ As cited in the frontmatter of Michael W. Doyle, *Striking First: Preemption and Prevention in International Conflict* (Princeton, NJ: Princeton University Press, 2008).

³⁰ Donald E. Abelson, *Capitol idea: Think tanks and US foreign policy* (Toronto: McGill-Queen's Press-MQUP, 2006).

incorporated as a criterion within the theoretical framework developed to analyze the Soleimani strike. Doyle does, however, recognize that there may be instances in which preemptive action might be necessary. However, this is all the more reason to enlist the UN's advice and support to ensure that such actions are impartially deemed legitimate. In *Striking First*, Doyle also suggested that more work was needed on the topic of preemption, as there has yet to be a comprehensive set of criteria presented which is capable of evaluating such operations. This observation served as an essential motivator for this dissertation. In response to this requirement, this project develops a framework that could universally determine the legitimacy of pre-attack self-defence operations. The recent Soleimani strike served as an attractive case study to determine the framework's relevance and suitability.³¹

The third scholar whose works were conceptually crucial to this project was Michael L. Walzer. He is widely known as the leading commentator on ethics and war over more than half a century. His most recognizable work remains his 1977 study, entitled *Just and Unjust Wars*.³² This book informs the methodological and theoretical aspects of this dissertation for several reasons. First, it has sought to classify specific themes found in modern military interventions. This classification was undoubtedly welcome as it provided significant analytical clarity on a somewhat convoluted topic. Walzer organized his book into five categories, specifically (i) the moral reality

³¹ Doyle, *Striking First*, pp.12-54.

³² Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed., (New York: Basic Books, 2000).

of war,³³ (ii) the theory of aggression,³⁴ (iii) the war convention,³⁵ (iv) dilemmas of war,³⁶ and (v) the question of responsibility.³⁷ Several of these categories discuss in considerable detail how preemptive attacks change not only the nature of war but the perceived legitimacy of all those involved.

Second, Walzer charts an interdisciplinary path and employs a wide range of sources to develop this book. He interweaved political theory with philosophy, ethics, morality and even poetry to demonstrate how unjust wars threaten every aspect of human culture and society. It ensured that multiple perceptions of armed conflict and its related concepts could be attained. Third, Walzer engaged in a rather lengthy debate about responsibility in armed conflict. Citing historical antecedents, he demonstrated the broader societal and cultural implications of claiming responsibility for armed conflict (mainly when the actions were somewhat morally questionable). This observation served as a starting point for analyzing the role and responsibility of all parties involved in the Soleimani strike.

³³ *Moral Reality of War*: When one engages in armed conflict, it can be reasonably assumed that at some point, an immoral action will take place. Regardless of rank, all participants in an armed conflict are equally responsible for any wrongdoing they commit, or are party to committing, during a war.

³⁴ *Theory of Aggression*: Preemptive attacks in armed conflict complicate this theory. Walzer discusses the historical understanding of the theory of aggression, noting the importance of affording protection to non-combatants and respecting the boundaries of the battlefield. Still, he recognizes how modern conflicts are more concerned with the ends over the means—in essence, states are becoming far more comfortable in escalating aggression in the absence of physical/discernable threats (as in the case of pre-attack self-defence).

³⁵ *War Convention*: Asymmetrical battles, unconventional threats/enemies (including transnational terrorism), and civilian casualties complicate the understanding of war and challenge our existing legal systems in the prosecuting of resulting violence.

³⁶ *Dilemmas of War*: Walzer discusses the changing nature of war, and the shift from honour and chivalry to total war hinged on the desire to win at all costs (regardless of whether or not the means are moral or legal). Engaging in armed conflict with evermore dangerous weapons, be they remotely piloted aircraft or nuclear missiles, also pose unique challenges to our understanding of war and our ability to claim morality in said conflicts.

³⁷ *Question of Responsibility*: After a conflict ends, how are war criminals apprehended and punished? Who is held responsible for immoral/illegal actions? These are just a few of the questions Walzer raises.

Beyond substance, Walzer's book has also influenced the structure of this dissertation. To address a challenging and somewhat muddled topic, he opted to structure his book by way of well-defined categories and terse narratives on tangential cases. By doing so, the themes, topics, criteria and issues examined provided the reader with an opportunity to draw connections and map causal relationships and patterns which would have otherwise been more difficult to identify. This organizational structure was used as a guide for the creation of the theoretical framework within this dissertation. Overall, this dissertation builds upon the existing literature published by these three distinguished scholars within the field of state-sponsored pre-attack self-defence.

Schools of Thought

'Pre-Attack Self-Defence' is a rapidly developing field of legal scholarship, and further work on this issue will undoubtedly lead to greater convergence between practitioners and theorists. And while these debates are unlikely to produce complete consensus, they might be hoped to raise awareness for the problem and indirectly increase pressure on states 'to be more transparent about the aims of self-defence.' Existing academic debates regarding state claims of pre-attack self-defence in military action must be examined first. The purpose of this is to determine where the scholarship currently stands and how it might evolve.³⁸

In the concluding section of this chapter, we will introduce and discuss the three schools of thought which mirror the critical tenets of the three types of pre-attack self-defence. Then, prominent thinkers, scholars and career professionals within each of these groups above will be identified and discussed to ascertain why they belong to these schools and how they represent their tenets. For simplicity of reference and saliency, the following schools of thought will be 'branded' by identifying their key defining principle.

Anticipatory self-defence will therefore be referred to as the 'Legitimate Threat' School of Thought. Ideas of pre-emptive self-defence will be referenced as the 'Strike First, Ask Questions Later' School. Finally, preventative self-defence will be termed the 'Charter is Dead' School.

³⁸ Christian J. Tams, 'The Necessity and Proportionality of Anti-Terrorist Self-Defence,' Vol.45, No.1, *Israel Law Review* (2010), p. 420.

Indeed, it is worth observing at the outset that some outrightly oppose all force undertaken to justify pre-attack self-defence.³⁹ This rather traditional-minded group of scholars argues that a state simply *cannot* act in ‘self-defence’ unless, and until, it suffers an armed attack.⁴⁰ Proponents of this position argue that the UN Charter's language supports their view—specifically Article 51, which states, in unambiguous terms, that ‘nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs.’⁴¹

Focusing narrowly on the UN Charter, the proponents of this view believe that a state cannot claim self-defence if an armed attack has not yet happened. Followers of this philosophy include Louis Henkin,⁴² Ian Brownlie⁴³ and Philip Jessup⁴⁴. Simply put, this group of scholars are worried that any use of self-defence before an armed attack may cause even more international tensions, which could result in states pre-empting preemptive attacks – an endless cycle of pre-escalation.⁴⁵ Furthermore, if states continue to justify the use of preemptive force as a form of ‘self-defence,’ it may end up completely muddling up the exact parameters set in the UN Charter regarding self-defence can be justified (i.e. post-attack). Moreover, the use of preemptive force might violate UN Article 2(4), which prohibits interstate use of force. A final concern that this group raises is the potential minimization of the UN Security Council’s role as a prosecuting power.⁴⁶ Despite the concerns raised by this group, three schools of thought support varying forms of pre-attack self-defence.

³⁹ For a greater discussion on this, refer to the Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, para 124 (‘Imminent threats are fully covered by Article 51... Lawyers have long recognized that this covers an imminent attack as well as one that has happened’).

⁴⁰ Murphy, ‘The Doctrine of Preemptive Self-Defence,’ p. 706 (referring to this as a ‘strict constructionist view’).

⁴¹ UN Charter, Article 51. Emphasis added.

⁴² See Louis Henkin, *International Law: Politics, Values and Functions* (Leiden: Martinus Nijhoff, 1990), p. 156.

⁴³ See Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963), p. 278.

⁴⁴ See Philip Jessup, *A Modern Law of Nations* (Hemden CT: Archon Books, 1968), p. 166.

⁴⁵ Doyle, *Striking First*, p. 26 (‘Unless all states agree on what constitutes a specific treat...every state will be pre-empting every other state’s preventative strikes’).

⁴⁶ Doyle, *Striking First*, pp. 26-27.

The first group to be examined will be referred to as the ‘Legitimate Threat’ School of Thought. Responding directly to Henkin, Jessup and Brownlie’s traditionalist claims, this school takes an ‘anticipatory’ view, believing that it is unfathomable that a state should suffer an attack before acting in self-defence.⁴⁷ Notable supporters of this school include Sir Humphrey Waldock, Sir Derek Bowett, Stephen M. Schwebel, Sir Robert Yewdall Jennings, Sir Arthur Watts, Lady Rosalyn Higgins Matthew Waxman. The following section will briefly note the similitudes between these scholars to illustrate why they have been assigned to this particular school of thought.

Sir Humphrey Waldock, Lady Rosalyn Higgins, Sir Derek Bowett, Sir Arthur Watts, and Sir Robert Yewdall Jennings were all British jurists who served for the ICJ or the UN in various capacities. Waldock, Higgins, and Jennings had also served as presidents of the ICJ, albeit at different times, while Watts was general counsel for the ICJ and Bowett worked as a legal officer for the UN. Except for Watts, all were professors of law, with Waldock lecturing at Oxford University, Higgins at LSE, and Bowett and Jennings at Cambridge. These four scholars published extensively on the importance of international political institutions in the conferral of legitimacy and legality in military actions, with Bowett even having written his Ph.D. dissertation on the matter of ‘self-defence in international law.’ Jennings and Watts even co-authored ‘Oppenheim’s International Law,’ a seminal publication that reaffirmed that the UN and its adjudicatory institutions could confer legitimacy through its varying practices and procedures. This belief in such institutions’ power fits with the ‘legitimate threat’ school of thought.

Two American scholars were chosen to join the aforementioned group of scholars for a rather interesting reason. Both Stephen M. Schwebel and Matthew Waxman are professors of law, with Schwebel teaching at Harvard, and Waxman at Columbia. Yet, it is not their professions that have garnered them a place in this cohort. Rather, it is the fact that both scholars have been

⁴⁷ See Dinstein, *War, Aggression and Self-Defence*, p. 191 (‘It would be absurd to require that the defending State should sustain and absorb a devastating [perhaps fatal] blow, only to prove immaculate conception of self-defence’); Derek W. Bowett, ‘The Use of Force for the Protection of Nationals Abroad,’ in Antonio Cassese (ed), *The Current Legal Regulation of the Use of Force* (Leiden: Martinus Nijhoff, 1986), p. 40; and Greenwood, ‘International Law and the Preemptive Use of Force,’ pp. 14-15.

outspokenly critical of the US military, and American foreign policy more generally. Waxman has openly criticized the Bush and Obama administrations for certain immoral military activities (including the operation of Guantanamo Bay and its documented Geneva convention violations), whilst Schwebel has set a historical precedent—becoming the first judge in the history of the ICJ to have voted against their own country in favour of international legal provisions.⁴⁸ These scholars have not only demonstrated their support of international law through scholarship, but they have done so in practice as well.

All of the aforementioned scholars argue that since states had a right to self-defence before the UN Charter was drafted—this customary law proviso should still be afforded to countries despite the current limitations set out in Article 51. As a result, this school of thought supports the use of anticipatory self-defence, as it considers it to be aligned with customary international law.⁴⁹ Beyond merely claiming that self-defence predates the UN Charter, this school points to the citation of the Caroline test at the Tribunals at Tokyo and Nuremberg as proof that an understanding of self-defence not only predates the UN Charter limitations set in Article 51 but is still referred to in international legal settings.⁵⁰ In other words, they argue that the Caroline incident of 1837 permitted ‘a state [to] use force in anticipation of an imminent armed attack.’⁵¹ Several

⁴⁸ Richard Bernstein, ‘American at the Hague Sits in Judgment of U.S,’ *The New York Times*, 20 September 1985; see also Pål Wrange, ‘Impartial or Uninvolved? The Anatomy of 20th Century Doctrine on the Law of Neutrality,’ *The Anatomy of 20th Century Doctrine on the Law of Neutrality* (2007); Eric A. Posner and Miguel FP De Figueiredo, ‘Is the International Court of Justice Biased?’ *The Journal of Legal Studies* Vol.34, No.2 (2005), pp. 599-630; Gleider I. Hernández, ‘Impartiality, bias, and the International Court of Justice,’ *Cambridge Journal of International and Comparative Law* Vol.1, No.3 (2012), pp. 183-207; and Stephen M. Schwebel, ‘National Judges and Judges Ad Hoc of the International Court of Justice,’ *The International and Comparative Law Quarterly* Vol.48, No.4 (1999), pp. 889-900.

⁴⁹ Murphy, ‘The Doctrine of Preemptive Self-Defence,’ p. 711.

⁵⁰ International Military Tribunal (Nuremberg), ‘Judgement and Sentences,’ *American Journal of International Law*, 1947, pp. 172-205; see also ‘International Military Tribunal at Tokyo,’ in Leon Friedman (ed), *The Law of War: A Documentary History*, Vol. 2, (London: Random House Publishing, 1972), pp. 1029, 1157-1159.

⁵¹ Deeks, *Taming the Doctrine of Pre-Emption*, p. 665.

states have resorted to anticipatory self-defence, and this practice has ensured its inclusion into customary international law, further validating the claim put forth by this school of thought.⁵²

The UN Secretary-General's High-Level Panel on Threats, Challenges and Change has reasoned that 'a threatened State, according to long-established international law, can take military action so long as the threatened attack is imminent, no other means would deflect it, and the action is proportionate.'⁵³ This school's proponents echo this sentiment, which is precisely why they only support anticipatory self-defence—not preemptive self-defence. They believe undeniable proof of an imminent, impending, or forthcoming armed attack is necessary for a self-defence claim to be valid. This proof is needed to avoid a potential 'slippery slope' of self-defence claims by states who opt to strike first without sufficient evidence to demonstrate that the threat (i) exists, (ii) is imminent, and (iii) is unavoidable.⁵⁴ Waxman has furthermore suggested that involving a test of imminence in deducing the lawfulness of force used in self-defence helps to ensure that a defender exhausts other, non-forcible means, and so 'reduces the likelihood of mistakes, insofar as waiting until that point is more likely to expose an adversary's true intentions.'⁵⁵

Moreover, anticipatory attacks do not cover opportunistic acts of aggression. These are attacks whose timing is based on the necessity or advantage of striking at a favourable moment, 'but for which the underlying motivation is offensive—that is, A attacking B not to forestall B from attacking A, but simply because B is especially vulnerable, or to prevent B from interfering

⁵² This includes Israel, the United Kingdom, and the United States. See Franck, *Recourse to Force*, p. 103 (the author notes that Israel's 'words and actions [perpetrated in the 1967 strike on Egyptian airfields] clearly asserted a right to anticipatory self-defence against imminent armed attack').

⁵³ High-Level Panel on Threats, Challenges and Change, *A More Secure World*, 2004, 63, para 188.

⁵⁴ Mary Ellen O'Connell, 'The Myth of Preemptive Self-Defence,' *American Society of International Law Task Force* (2002), p. 8 ('based on the practice of states...as well as simple logic, international lawyers generally agree that a state need not wait to suffer the actual blow before defending itself, so long as it is certain the blow is coming'); see also Mary Ellen O'Connell, 'American Exceptionalism and the International Law of Self-Defense,' *Denver Journal of International Law and Policy* Vol.31, No.1 (2002), p. 43; and Mark A. Drumbl, 'Terrorist Crime, Taliban Guilt, Western Victims, and International Law,' *Denver Journal of International Law and Policy*, Vol.31, No.1 (2002), p. 69.

⁵⁵ Matthew Waxman, 'The Use of Force Against States That Might Have Weapons of Mass Destruction,' *Michigan Journal of International Law*, Vol.31, No.1 (2009), p. 8.

with A's plans to attack a third party.' Anticipatory attacks typically signal the beginning of a war—and so the decision to resort to these preemptive measures usually requires strategic planning, input from the highest levels of government and adherence to relevant national security policy. This form of self-defence can result in severe political consequences, especially if the threat does not appear imminent to the international community.⁵⁶

Additionally, sources of ambiguity in threat assessments can stem from insufficient or flawed intelligence and the uncertain nature of the future—no one can accurately predict what will happen, so planning for this uncertainty is problematic strategically and legally speaking. Anticipatory attacks also require superior intelligence about the intentions and capabilities of the enemy. This intelligence must be of superior quality, capable of convincing any objective party that the actions undertaken were legitimate and lawful. The international community expects states who engage in preemptive strikes to share intelligence, demonstrating why they settled on this course of action.⁵⁷ This requirement motivates states to ensure that their decision to act in this matter is supported by substantial, credible and actionable intelligence capable of sufficiently convincing impartial states that their actions were lawful and legitimate. States sometimes do this, and the extensive display of imagery that accompanied the Cuban Missile Crisis is a much-cited example, but such public displays of sensitive capabilities often trigger fierce internal arguments within security bureaucracies.⁵⁸

We now need to consider what we might call the 'Strike First, Ask Questions Later' School of Thought. Here a preemptive attack is launched based on the expectation that the adversary is

⁵⁶ Mueller et. al., *Striking First*, pp. 12-35.

⁵⁷ This is similar to when the CIA was asked for their intelligence on Israel's Al-Kibar strike; see also Andrew Garwood-Gowers, 'Israel's Airstrike on Syria's Al-Kibar Facility: A Test Case for the Doctrine of Pre-emptive Self-Defence?' *Journal of Conflict & Security Law* Vol.16, No.2, (2011), pp. 263-291; Shlomo Nakdimon, *First Strike: The Exclusive Story of How Israel Foiled Iraq's Attempt to Get the Bomb*, (New York: Summit Books, 1987); Erich Follath and Holger Stark, 'How Israel Destroyed Syria's Al Kibar Nuclear Reactor,' *Spiegel Online* 11, (2009), pp. 22-26; Leonard S. Spector and Avner Cohen. 'Israel's Airstrike on Syria's Reactor: Implications for the Non-Proliferation Regime.' *Arms Control Today* Vol.38, No.6, (2008), pp. 15-21; and Jonathan Spyer, 'Review of Shadow Strike: Inside Israel's Secret Mission to Eliminate Syrian Nuclear Power.' *Middle East Quarterly* (2020).

⁵⁸ Mueller et. al., *Striking First*, pp.109-110.

about to attack and that ‘striking first will be better than being attacked.’ Preemption can sometimes refer to striking an enemy before making pre-emption impossible—‘such as mobilizing or dispersing forces’ in preparation for an offensive or receiving weapons from (or transferring them to a third party). Preventative attacks are motivated, not so much by the desire to strike first rather than second, but by the desire ‘to fight sooner rather than later.’⁵⁹

It should be clear by now that preemptive self-defence is the most disputed principle in *jus ad bellum*. Still, preemptive attacks do have their benefits—the most evident is being an attacker rather than a defender, so in essence, these ‘offensive strategies [are] carried out for defensive reasons.’⁶⁰ Scholars and states who argue that the current law (and even the Caroline test) is too restrictive comprise this school of thought. Professors like Michael N. Schmitt and Sean D. Murphy are emblematic of this school and its preemptive view.

Both Schmitt and Murphy are American international legal scholars who currently teach law at post-secondary institutions. Schmitt at the University of Reading, and Murphy at the George Washington University Law School. These scholars were chosen for their expert knowledge on the use of force in international affairs and US military operations' legality post-9/11. Schmitt was mainly chosen for his work on US counter-terrorism operations and his considerable analysis of their normative legal limits.⁶¹ On the other hand, Murphy was chosen for his experience as a legal counsellor at The Hague and his prominent publications on the changing nature of US practices vis-à-vis international law.⁶² Several of their scholarly findings informed the writing of this dissertation.

⁵⁹ Ibid, p. 6-8; see also Lawrence Freedman, ‘Prevention, Not Pre-emption,’ *The Washington Quarterly*, Vol.26, No.2 (2003), pp. 105-114.

⁶⁰ Deeks, ‘Taming the Doctrine of Pre-emption,’ pp. 10, 12; see also Rachel Bzostek, *Why Not Pre-empt? Security, Law, Norms and Anticipatory Military Activities*, (Routledge, 2016); Mary Manjikian, ‘Special Problems I: The Question of Preemption,’ *The Ashgate Research Companion to Military Ethics*, (London: Routledge, 2016), pp. 79-92; and James A. Green, ‘Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-defense,’ *Cardozo Journal of International and Comparative Law*, Vol.14 (2006), p. 429.

⁶¹ See Michael N. Schmitt, *Counter-Terrorism and the Use of Force in International Law*, (George C. Marshall European Center for Security Studies, 2002).

⁶² See Sean D. Murphy, *United States Practice in International Law: Vol 2, 2002-2004*, (Cambridge University Press, 2009).

In particular, Murphy surmised that 9/11 served as a catalyst in the change in perception states have towards the defensive use of force. He spent much of his professional career studying the impact of significant events and historical periods on foreign policy and domestic politics in the United States.⁶³ Indeed, the 9/11 attacks had an international impact, as allied states began to feel similarly (if not more) vulnerable to these ‘invisible’ non-state threats. So, with the beginning of the global war on terror, states found it easier to justify more intrusive and legally ambiguous practices if undertaken with the legitimate motivation to prevent another 9/11. Schmitt shared this view and reasoned that ‘ultimately, the law must be construed in the context in which it is to be applied if it is to remain relevant; and in the twenty-first-century security environment, insistence on a passé restrictive application of international legal principles to strategies of pre-emption would quickly impel states at risk to ignore them.’⁶⁴

Thus, both scholars represent this school of thought because they advance the notion that a response that takes place in the last possible window of opportunity is lawful and more effective than waiting for an attack to begin or continue. In this way, the state can address the threat from a position of power while ensuring it can effectively defend itself and its population.⁶⁵ However, to identify this ‘last possible window of opportunity,’ a high level of confidence about an attack's imminence (and how that threat might manifest) needs to be achieved. This constraint raises new questions about what types of intelligence might be needed and ‘what degree of confidence a state must have about the accuracy of that intelligence.’⁶⁶ Unsurprisingly, the United States is amongst some nations which consider preemptive self-defence lawful.⁶⁷ However, other countries that lack

⁶³ Murphy, ‘The Doctrine of Preemptive Self-Defence,’ p. 745.

⁶⁴ Schmitt, ‘Preemptive Strategies in International Law,’ pp. 513, 546; see also Howard M. Hensel, *The Legitimate Use of Military Force: The Just War Tradition and the Customary Law of Armed Conflict*, (Routledge, 2016); Thomas M. Nichols, *Eve of Destruction: The Coming Age of Preventive war*, (University of Pennsylvania Press, 2008); and Richard K. Betts, ‘Striking First: A History of Thankfully Lost Opportunities,’ *Ethics & International Affairs* Vol.17, No.1, (2003), pp. 17-24.

⁶⁵ Schmitt, ‘Responding to Transnational Terrorism Under the Jus Ad Bellum: A Normative Framework,’ p. 1, 21; see also Kalliopi Chinoglou, *Reconceptualizing the Law of Self-Defence*, (Brussels: Ant. N. Sakkoulas Publishing, 2008) pp. 334-335.

⁶⁶ Deeks, ‘Taming the Doctrine of Pre-Emption,’ p. 667.

⁶⁷ National Security Council, ‘The National Security Strategy of the United States of America,’ p. 15.

such advanced intelligence capabilities will undoubtedly encounter issues in their available scope of action.

In fact, even the 2002 National Security Strategy advocated for the relevance of preemptive self-defence.⁶⁸ Its authors saw pre-emption as a way of offsetting the decline of American power. The strategy asserted that even if uncertainty about the nature of a threat existed, preemptively addressing such dangers could keep them from materializing and causing untold devastation—as in the case of possible WMD attacks.⁶⁹ Other countries that echo this sentiment include the United Kingdom, Australia and Japan (who argue in favour of preemptive self-defence to stop, for instance, terrorists from acquiring WMDs).

The third school of thought, which some might argue has the most contentious philosophy, is aptly named the 'Charter is Dead.' The views presented herein represent those who ascribe to the dogma of 'preventative' pre-attack self-defence. To clarify, this position is only controversial if the unilateral use of force is undertaken without Council authorization. If the UN Security Council authorizes a pre-attack force for self-defence, this decision is widely viewed to be lawful and legitimate.⁷⁰ The Council, however, only allows states to use force against those who threaten the peace of the international community.⁷¹

A UN High-Level Panel Report echoes this fact, suggesting that 'if there are good arguments for preventative military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to.'⁷² Thus, the Council serves as a 'jurying or adjudicative process,' which impartially weighs the evidence and

⁶⁸ Some scholars believe that the wording in the National Security Strategy may also allow for justifications of preventative self-defence. See Doyle, *Striking First*, p.25; Ivo Daalder and James Steinberg, 'The Future of Pre-emption,' *American Interest*, Vol.1 No.2 (2005).

⁶⁹ National Security Council, 'The National Security Strategy of the United States of America,' p. 15 ('under long-standing principles of self-defence, we do not rule out the use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy's attack. When the consequences of an attack with WMD are potentially so devastating, we cannot afford to stand idly by as grave dangers materialize. This is the principle and logic of pre-emption.')

⁷⁰ Deeks, 'Taming the Doctrine of Pre-Emption,' pp. 663, 668.

⁷¹ See UN Charter, Articles 39, 42.

⁷² High-Level Panel, *A More Secure World*, para. 190.

determines whether the action in self-defence is necessary against perceived threats.⁷³ However, supporters of this type of self-defence often argue against the need for Council authorization. As surmised, the US is one of them. For years, the US has even defended its right to use force in the face of perceived threats. They did this, ‘even if uncertainty remain[ed] as to the time and place of the enemy attack.’⁷⁴ Suppose a state is restricted or delayed in its ability to act. In that case,⁷⁵ the US government argues that it may cost the victim state the ability to act altogether by missing the critical window of opportunity, particularly when the threat comes from WMDs, terrorists, or other prevalent transnational issues.⁷⁶

Some scholars support the US’s stance on the matter and further argue that the use of preventative self-defence is only controversial because the UN Charter is outdated and inapplicable to current threats, like transnational terrorism.⁷⁷ Exponents of preventative self-defence, who belong to this ‘Charter is Dead’ school of thought, include distinguished scholars like Michael J. Glennon and Anthony C. Arend. Both are American and university professors, with Glennon teaching law and diplomacy and Tufts University, and Arend teaching government at Georgetown University. Glennon was mainly chosen for his 2014 publication, which argued that, due to national security concerns, law and democracy have become largely symbolic in the U.S—making it all too easy for the government to justify unlawful military actions as ‘necessary’ for the preservation of national security.⁷⁸ This theory will be considered and examined in later chapters with the examination of the main case study. Arend was similarly chosen for a notable publication

⁷³ Thomas Franck, ‘The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium,’ *American Journal of International Law*, Vol.100, No.1 (2006), pp. 88, 104.

⁷⁴ National Security Council, ‘The National Security Strategy of the United States of America,’ p.15; see also UK Attorney General’s speech in the House of Lords, HL Deb, 21 April 2004, Vol.660 cols 369-372 (according to the House of Lords, self-defence may be acceptable as a state response against terrorist groups who are understood to pose an imminent threat by carrying out multiple attacks in a short period of time, even if there is insufficient evidence available about the date/time of the potential next attack).

⁷⁵ A state would have to wait to hear back from the UN Security Council for judgement and authorization. However, the timeframe for such a request is unknown, and many states view this as impractical in actual practice—particularly when faced with an imminent threat

⁷⁶ Deeks, ‘Taming the Doctrine of Pre-Emption,’ p. 668.

⁷⁷ See Murphy, ‘The Doctrine of Preemptive Self-Defence,’ pp. 717-19.

⁷⁸ See Michael J. Glennon, *National Security and Double Government* (Oxford: Oxford University Press, 2014).

in which he examined the use of force by states to determine whether international law was still capable of restricting and regulating military operations.⁷⁹

For every proponent of this school of thought, there are many more critics who seek to challenge its philosophy. Those who oppose the use of preventative self-defence but accept (under the right circumstances) the resort to preemptive and anticipatory self-defence believe that ‘the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral preventative action...to be accepted’.⁸⁰ A key example was Israel’s attack on the Osirak reactor in 1981. The international community criticized this strike because it appeared preventative—since there was insufficient evidence that Iraq’s nuclear programme was advanced enough to pose a threat, much less an imminent one.⁸¹ Later, Israel’s decision was endorsed after new information was presented, which demonstrated that Iraq posed a greater risk than initially thought.

Yet even those who argue in favour of pre-attack self-defence agree that clear limitations must be established to ensure that no state unnecessarily abuses another. Despite this being a significant intellectual challenge, some scholarly developments have been made in this regard. The following discussion will introduce a list of factors, criteria, and steps proposed by the three scholars of focus in this project: Michael L. Walzer, Abraham D. Sofaer and Michael W. Doyle. These scholars posited that their conclusions could serve as a practical starting point to ascertain the legitimacy and legality of a state’s claim to pre-attack self-defence. To achieve this, the following three scholars' proposed criteria were combined and adapted to create this dissertation’s theoretical framework.

⁷⁹ See also Anthony Clark Arend, *International Law and the Use of Force* (London: Routledge, 2014); Anthony C. Arend and Robert J. Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (New York: Psychology Press, 1993); and Fernando R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (New York: Transnational, 1988).

⁸⁰ High-Level Panel, *A More Secure World*, paras. 189-190.

⁸¹ Rosalyn Higgins, *The Attitude of Western States Towards Legal Aspects of the Use of Force*, in Cassese, *The Current Legal Regulation of the Use of Force* (Dordrecht: Martinus Nijhoff Publishers, 1986), p.443.; Franck, *Recourse to Force*, p.108; Terence Taylor, ‘The End of Imminence?’ *The Washington Quarterly*, Vol. 27, No. 4 (2004), pp. 57-58.

Michael Laban Walzer, regarded as a prominent American political theorist and perhaps the leading ethicist of war, has insisted that it is both unrealistic and immoral to expect a state to be attacked before allowing it to act in self-defence. He further argued that requiring a state to wait for an attack to be imminent before responding is inadequate in the current climate.⁸² Walzer's view is that a threat should not be expected to be imminent, but rather, 'sufficient.' To be considered a 'sufficient threat,' the following criteria must be met: (i) the aggressor state must demonstrate an intent to attack the victim state, (ii) there is a 'degree of active preparation that makes the intent a positive danger,' and (iii) there is a risk in waiting for the threat to increase.⁸³ Walzer argued that states might use military force in the face of threats of war, 'whenever the failure to do so would seriously risk their territorial integrity or political independence,' even if there is no evidence to support the claim of imminence. Intent to attack the victim state, coupled with a 'degree of active participation that makes that intent a positive danger,' should be sufficient to warrant preemptive self-defence.⁸⁴

Building on Walzer, in 2003, Abraham David Sofaer, an American District Court Judge, proposed four 'steps' a state must consider before resorting to preemptive self-defence. These can be simply boiled down to (i) magnitude of the threat, (ii) the probability that the threat will occur, (iii) the exhaustion of peaceful alternatives, and (iv) the consistency of the act with the UN Charter.⁸⁵ Like Sofaer before him, Michael Doyle, an American International Relations scholar, similarly proposed four factors that need to be considered.⁸⁶ These include (i) the lethality of the

⁸² Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed., (New York: Basic Books, 2000), pp. 74-85; see also Julius Stone, *Aggression and World Order: A Critique of United Nations Theories of Aggression* (London: The Lawbook Exchange, 2006); Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects,' *European Journal of International Law* Vol.10, No.1 (1999), pp. 1-22; and Antonio Cassese, 'The International Community's "Legal" Response to Terrorism,' *International & Comparative Law Quarterly* Vol.38, No.3 (1989), pp. 589-608.

⁸³ Mueller et. al., *Attacking in Self-Defence*, p. 65; see also Walzer, *Just and Unjust Wars*, pp.76-79; see also Arthur Mark Weisburd, *Use of Force: The Practice of States Since World War II*, (Carlisle: Penn State Press, 1997); and Stanimir A. Alexandrov, *Self-Defense Against the Use of Force in International Law*, Vol. 23. (Delf: Martinus Nijhoff Publishers, 1996).

⁸⁴ Walzer, *Just and Unjust Wars*, p. 81; See also Mueller et. al., *Attacking in Self-Defence*, p. 65.

⁸⁵ Abraham Sofaer, 'On the Necessity of Pre-Emption,' *European Journal of International Law*, Vol.14, No.2 (2003), p. 209, 220.

⁸⁶ Doyle, *Striking First*, p. 46; see also Elisabeth Zoller, 'The Law Applicable to The Preemption Doctrine,' *Proceedings of The ASIL Annual Meeting*. Vol. 98, (Cambridge: Cambridge University

threat, (ii) the likelihood that the threat will materialize, (iii) the legitimacy of the proposed action (compared against just war principles), and (iv) the legality of the target state's behaviour and the victim state's response. When compared and contrasted, there are common elements found within these scholarly proposals.⁸⁷ They all consider the nature and severity of the threat, the potential destruction it could cause, the urgency of the threat, and if alternatives have been exhausted—including referring the matter in question to the Security Council.

As illustrated above, scholars have no issue in coming to a consensus on what factors need to be considered when examining pre-attack self-defence. However, the issue lies in a disagreement regarding how these proposals should be adapted and implemented in real life. One way to advance this debate is to encourage 'wider disclosures of intelligence by the state using force (of the type that took place after Israel attacked the Syrian nuclear facility) and less on the law.'⁸⁸ But at what stage should this intelligence be disclosed. Some propose that the government 'do what is necessary' and ask forgiveness later by supporting their actions with claims of necessity and righteousness.⁸⁹ But how might this affect the perceived legitimacy of foreign policy, military operations and legal proceedings internationally? It remains essential that there exists a level of consensus among scholars. Particularly about what factors need to be considered and adhered to for an action carried out in preemptive force to be viewed as lawful and legitimate.

We might ask, does the doctrine need to be updated if it is so infrequently used? The United States justified its invasion of Iraq by citing other Security Council resolutions, not pre-attack self-defence.⁹⁰ The US justified its drone strikes against terror groups in multiple countries as part of a

Press, 2004); Stephen A. Gardbaum, 'Nature of Preemption,' *Cornell Law Review* Vol.79, (1993) p. 767; Antony Anghie and Charles Hill, 'The Bush Administration Preemption Doctrine and The United Nations,' *Proceedings of The Annual Meeting American Society of International Law*, The American Society of International Law, 2004; and Paul Wolfson, 'Preemption and Federalism: The Missing Link,' *Hastings Law Quarterly* Vol.16, No.1 (1988), p. 69.

⁸⁷ See Lubell, *'The Problem of Imminence in an Uncertain World.'*

⁸⁸ Deeks, 'Taming the Doctrine of Pre-Emption,' p. 675.

⁸⁹ Harold Koh, 'Comment,' in Doyle, *Striking First*, p. 117.

⁹⁰ William Taft IV and Todd Buchwald, 'Pre-emption, Iraq, and International Law,' *American Journal of International Law*, Vol.97, No.3, (2003), p. 557; see also Marieke De Goede, 'The Politics of Preemption and The War on Terror in Europe,' *European Journal of International Relations* Vol.14, No.1 (2008), pp. 161-185; and Neta C. Crawford, 'The Justice off Preemption

military campaign during ongoing armed conflict.⁹¹ Nevertheless, some cases cannot be chalked up to 'ongoing armed conflict' and, therefore, require judgement according to the existing doctrine on preemptive self-defence. The clearest, and most widely cited, is Israel's strike on the Osirak reactor in 1981. Admittedly, these cases of apparent preemptive self-defence are quite rare.

So, if states rarely rely on pre-attack self-defence doctrine, why do they still advocate for its expansion and modernization? There are three main reasons for this.⁹² The first and most important is that it serves as a deterrent. Having the option to engage in pre-attack self-defence cautions other states from undertaking actions that might be misconstrued as aggressive or precursors to an armed attack. The second is that it achieves a strategic purpose of publicity and familiarity with the practice of preemptive force. When a government makes public allegations about the requirement of a more practical self-defence policy, it may allow for later justifications relying on pre-emption to be more acceptable. Lastly, it demonstrates the necessity of this strategy in potential future military conflicts. States believe that in the future, technological advancements will increase threats, requiring a pre-emption doctrine that will allow them to respond effectively.

States have ignored or willfully disobeyed laws that they believe leave them more vulnerable to external attacks. With the 9/11 attacks fresh in the international community's collective memory, many countries (but especially the US) find it easier to defend against potential violations of law than deal with the political fallout of another large-scale attack. Thus, a balance must be struck between respect for the law and duty to one's citizens' collective security. In order to achieve this, an examination of historical precedents is necessary.

Framework & Design

and Preventive War Doctrines,' from *Just War Theory* (New York: Palgrave Macmillan, 2005), pp. 25-49.

⁹¹ The White House, 'Remarks by John Brennan, Strengthening Our Security by Adhering to Our Values and Laws,' *Office of the Press Secretary*, 16 September 2011.

⁹² See Andrew Garwood-Gowers, 'Israel's Airstrike on Syria's Al-Kibar Facility: A Test Case for the Doctrine of Preemptive Self-Defence?' *Journal of Conflict & Security Law*, Vol. 16, No. 2, 2011, p. 276.

An ‘open coding’ method was used in the development of the theoretical framework for this dissertation.⁹³ This method facilitated the collation of qualitative data derived from selected scholarly works, government documents, military policies and pertinent international laws. This information was then cross-referenced, allowing for prevalent themes in literature, law and government policy to be reworked and presented as critical conditions. These were then assembled into a table format, offering a straightforward, standardized method to analyze operations undertaken in pre-attack self-defence.

A theoretical framework is understood as an analytical tool connected to a research aim. It also aids in organizing ideas while facilitating the ‘explaining, exploring or describing’ of empirical research.⁹⁴ In doing so, a further peripheral goal was achieved. This project concurrently managed the initial groundwork for a standardized set of criteria to evaluate state-sponsored pre-attack self-defence actions while determining such operations’ legitimacy. In essence, this project’s theoretical framework is innovative. It combines a framework derived from the literary contributions of three key scholars with the known parameters of customary international to develop a comprehensive set of conditions necessary for determining the legitimacy of state-sponsored pre-attack self-defence. This dissertation employed a distinctive set of assumptions to develop the main theoretical framework, which also served as a diagrammatical representation of pre-attack self-defence in customary international law. This framework resulted in a basic set of criteria that could, in theory, be used to determine the legitimacy of pre-attack self-defence operations.

In scholarly works, the research objectives, theoretical framework and research design form an ideal trinity. Johann Mouton, Professor of Research at Stellenbosch University, claimed that a scholar must ‘plan, structure, and execute’ their undertaken research in such a way as to

⁹³ Judith A. Holton and Isabelle Walsh, *Classic Grounded Theory: Applications with Qualitative and Quantitative Data* (New York: Sage, 2016). See also Anne O’Connor, Barry Carpenter, and Barry Coughlan, ‘An Exploration of Key Issues in the Debate Between Classic and Constructivist Grounded Theory,’ *Grounded Theory Review* Vol.7, No.1 (2018).

⁹⁴ Earl Babbie, *The Practice of Social Research* (Belmont, CA: Thompson Wadsworth, 11th ed, 2007), p. 89.

ensure the ‘validity of their findings.’⁹⁵ In essence, all significant components of a dissertation must work together in achieving the aim of the project by answering the research questions posed and arriving at verifiable conclusions. In the social sciences, the research design is considered the road map or master plan of a dissertation. So, after the relevant philosophical assumptions were reviewed in the selected literature, and a set of research questions were developed, the focus shifted to practical research design. The aim was to create a design that would facilitate appropriate data collection and allow for viable conclusions to be reached for each of the aforementioned research questions. This design process was achieved in the following ways.

As part of the research design, the audience for this dissertation was also taken into consideration. It is assumed that scholars, researchers, academicians, government officials and law-makers would benefit from the research undertaken in this project. On this chosen topic, there is relatively little research so far undertaken. What has been done tends to take a rather legal or ethical approach. Alternatively, this dissertation takes a more practical approach: evaluating the practice of pre-attack self-defence from a US counter-terrorism perspective and proposing ways to make such operations appear more legitimate without compromising on their strategic efficacy.

Before any empirical research was undertaken, the first step was to recognize that the Soleimani strike's legitimacy hinged on its adherence, or perceived adherence, to the customary international law of pre-attack self-defence. Thus, relevant legal documents and pertinent scholarly sources, tracing back from its origins to its modern application, were gathered and compiled. Thereafter, the prerequisite for legitimate pre-attack conditions was highlighted. This included a separate discussion on the requirement of imminence. Then, modern challenges and legal loopholes in the customary law were introduced, paying particular attention to how these might be problematic in the context of the legitimacy of operations executed under the guise of this legal provision. When this was achieved, an overview of the main case study, namely the Soleimani strike, was presented.

⁹⁵ Johann Mouton, *Understanding Social Research* (New York: Van Schaik Publishers, 1996), p. 175. See also W. Webb and C. J. Auriacombe, ‘Research Design in Public Administration: Critical Considerations,’ *Journal of Public Administration* Vol.41, No.3 (2006), pp. 588-602.

The empirical data was chronologically organized in a timeline format⁹⁶ to offer a clear understanding of the events which occurred during and immediately following the strike on Soleimani.⁹⁷ Thereafter, a brief biographical background on Soleimani followed, emphasizing his relevant formative experiences, strategic accomplishments, and enduring legacy in the region.⁹⁸ This discussion was followed by a section tracking the differing political stances taken by past presidential administrations—from Bush to Trump. Then, the uncertainty over leadership decapitation strategies was debated. A review of potential alternative actions, from diplomacy to deterrence, was then introduced and considered. The last point in the section examined the legal ramifications and precedents which arose from the execution of foreign government officials. After available relevant information had been gathered from theoretical articles on the subject, policy documents, US government press releases and news reports, a theoretical framework was developed.

This framework's criteria were chosen with due attention to the theoretical literature. Conditions like imminence, necessity, and intelligence disclosures were included to evaluate, analyze, and ascertain the Soleimani strike's legitimacy effectively and objectively. Discrepancies in US government claims and actual events were then identified and reported. The purpose of this framework was to determine whether or not the Soleimani strike was legitimate and adhered to commonly accepted legal parameters and scholarly suggestions. However, there were two additional aims in designing this framework.

The first was to offer a comprehensive framework to evaluate the legitimacy of state-sponsored pre-attack self-defence operations, like the Soleimani strike. This theoretical framework cannot claim to offer a universal standard. However, it does intend to serve as an initial starting

⁹⁶ Christopher T. Street and Kerry W. Ward, 'Improving Validity and Reliability in Longitudinal Case Study Timelines,' *European Journal of Information Systems* Vol.21, No.2 (2012), pp. 160-175.

⁹⁷ Due to the case study's contemporary nature, chaotic daily news reports and vague government briefings created a somewhat confusing picture. Hence, it became evident that a timeline might help with the analysis of events and their political fallout. This timeline also served to offer an additional sense of clarity on the somewhat inconsistent nature of US government statements concerning the strike.

⁹⁸ Expectedly, in the days that followed Soleimani's death, discussions and reports focused almost exclusively on the drone strike which killed him.

point for future scholarly research on the subject. The lack of a comprehensive framework proved to be a significant research challenge during this dissertation's writing. Had such a standard of evaluation existed, it might have precluded the US government from engaging in risky, illegal and unrestrained operations while offering scholars the opportunity to judge the legitimacy of said actions dispassionately. The creation of this theoretical framework seeks to provide such an objective standard of evaluation, while contributing to the literature on the topic. Accordingly, this dissertation has aimed for both a practical and theoretical impact.

The framework's second aim was to illuminate the shortcomings and operational issues that surrounded the Soleimani strike. The purpose of this was to identify the issues that threatened the operation's legitimacy to determine how these might be avoided in the future. It could manifest itself as an example of states taking the initiative to adhere to the criteria mentioned above to avoid said issues or have these criteria be written into law to guarantee abidance. The purpose would be to inform similar operations going forward by exposing the mistakes, ramifications, and fallout of the Soleimani strike.

The empirical research for this dissertation was conducted by categorizing the known elements of the Soleimani strike into the various created categories underpinned by the developed theoretical framework. The research was conducted immediately following the Soleimani strike, from January 3rd, 2020, until the moment of submission. The medium for information collection was both print and online sources.⁹⁹ Multiple sources were used in the creation of this project, and triangulation was employed where possible.¹⁰⁰ However, special attention was paid to the material's relevance and the credibility of the author(s) of said publications. Sources were not chosen for their political inclinations or affiliations. Likewise, there were no preconceived biases when embarking on the research for this dissertation.

⁹⁹ Due to the Covid-19 pandemic, and ensuing restrictions, data collection became virtual from that point onwards. Thus, the dissertation was written in Canada, with supervisory support being regularly and consistently given virtually from the UK.

¹⁰⁰ Philip HJ. Davies, 'Spies as Informants: Triangulation and the Interpretation of Elite Interview Data in the Study of the Intelligence and Security Services,' *Politics* Vol.21, No.1 (2001), pp. 73-80.

Moreover, the methodological approach taken in this dissertation was predominantly qualitative and interpretive. The paradigm used in this research was primarily based on Seymour Papert's constructionist paradigm.¹⁰¹ Papert defined constructionism as

a mnemonic for two aspects of the theory of science education underlying this project. From constructivist theories of psychology, we take a view of learning as a reconstruction rather than as a transmission of knowledge. Then we extend the idea of manipulative materials to the idea that learning is most effective when part of an activity the learner experiences as constructing a meaningful product.¹⁰²

Many in the social sciences refer to this paradigm as a 'learning-by-doing' formula, whereby researchers use the information they already know as a starting point from which to understand and evaluate a current evolving issue. This formula has been employed in this dissertation. Existing information was compiled and used as a starting point for creating a new framework capable of better assessing the legitimacy of state-sponsored pre-attack self-defence attacks and addressing the questions raised within relevant seminal works on the topic.

According to Martin Terre Blanche and Kevin Durrheim, Professors of Psychology from South Africa, the constructionist paradigm sees society as *socially* constructed.¹⁰³ This approach was deemed most applicable for this project, as the Soleimani case hinges on the customary law of pre-attack self-defence, which itself is a socially accepted practice. Constructionists believe that collective perspectives and actions shape society. However, it is interesting to note that, as Michael D. Meyers found, these established social, cultural and political norms constrain individuals'

¹⁰¹ Which built upon Jean Piaget's earlier epistemological theory of constructivism. See M. Cakir, 'Constructivist Approaches to Learning in Science and Their Implications for Science Pedagogy: A Literature Review,' *International Journal of Environmental & Science Education*, Vol. 3, No.4 (2008), pp. 193–206.

¹⁰² N. Sabelli, *Constructionism: A New Opportunity for Elementary Science Education* (New York: DRL Div. of Research on Learning in Formal and Informal Settings, 2008) pp. 193–206.

¹⁰³ Martin Terre Blanche and Kevin Durrheim, *Research in Practice: Applied Methods for the Social Sciences* (Cape Town: University of Cape Town Press, 1999).

actions.¹⁰⁴ Thus, the constructionist theory recognizes that reality is socially constructed at the societal level and that these constructions also restrain and regulate individual actions.

Predictably perhaps, a constructionist model informed the research structure and design achieved in the Soleimani strike analysis. First, the accepted societal norms and practices regarding pre-attack self-defence were examined by way of gauging international perspectives and opinions on the strike-through various sources, including news reports and press briefings. The constraining factor, namely the customary international law of pre-attack self-defence, was examined to ascertain whether this was sufficiently followed during the Soleimani operation. Lastly, the development of a theoretical framework in this dissertation also reflected this constructionist understanding. The criteria used in the framework were compiled from existing legal and scholarly conceptions, while the framework itself was created to constrain and evaluate the legitimacy of such operations.¹⁰⁵

Underlying the constructionist paradigm was a complementary interpretivist approach. For conceptual clarity and brevity, Prof. Geoff Walsham's definition of interpretivism in research will be employed here. Walsham posited that since reality is a social construct, researchers and the methods they employ are part of this construct. Given that there is no objective reality, some researchers' findings cannot be fully replicated by others since reality is subjective and open to interpretation. This view was initially inspired by Clifford J. Geertz, an American cultural anthropologist who reasoned that the purpose of an interpretivist approach is to acquire a more profound understanding or meaning from the discourse or research being undertaken.¹⁰⁶

Geertz maintained that the interpretive approach was 'not to answer our deepest questions, but to make available to us answers that others... have given, and thus to include them in the

¹⁰⁴ Michael D. Myers and David Avison, *Qualitative Research in Information Systems: A Reader* (New York: Sage Publications, 2002).

¹⁰⁵ This approach has hitherto mostly been preferred by international human rights law, see Hannah Miller, 'From "Rights-based" to "Rights-framed" Approaches: A Social Constructionist View of Human Rights Practice,' *The International Journal of Human Rights* Vol.14, No.6 (2010), pp. 915-931.

¹⁰⁶ Geoff Walsham, *Interpreting Information Systems in Organizations* (Chichester, NH: Wiley, 1993), p. 5.

consultable record of what man has said.’¹⁰⁷ Thus, scholarly research, primarily undertaken through an interpretive approach, is not concerned with finding or explaining one objective reality.¹⁰⁸ Rather, it is interested in discovering multiple realities. As Professor of Sociology Norman K. Denzin noted, ‘[o]bjective reality will never be captured. In-depth understanding, the use of multiple validities, not a single validity, a commitment to dialogue is sought in an interpretive study.’¹⁰⁹

Data Selection & Collection

As Professor Keith Punch aptly put it, the qualitative method is based on ‘empirical research where data is not in the form of numbers.’¹¹⁰ This research method aims to study a phenomenon within its real-world context, without intervening or manipulating the studied environment.¹¹¹ In essence, ‘qualitative researchers are interested in understanding the meaning people have constructed, that is, how people make sense of their world and their experiences in the world.’¹¹² However, it is essential to recognize that qualitative researchers study things in their natural settings, attempting to make sense of or interpret phenomena in terms of the meanings people bring them.¹¹³ Thus, qualitative research attempts to bridge the gap between the practical and the theoretical to better understand a phenomenon.¹¹⁴

¹⁰⁷ Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), p. 29.

¹⁰⁸ For a greater discussion on these ongoing epistemological debates, see Norman K. Denzin and Yvonna Lincoln, *Handbook of Qualitative Research*, 4th ed. (Thousand Oaks, CA: Sage, 2011), pp. 769-802; and Mats Alvesson and Kaj Sköldbberg, *Reflexive Methodology: New Vistas for Qualitative Research*, 2nd ed. (Thousand Oaks, CA: Sage Publications, 2009).

¹⁰⁹ Norman K. Denzin, ‘On Elephants and Gold Standards,’ *Qualitative Research*, Vol.10, No.2 (2010), pp. 269-272.

¹¹⁰ Keith F. Punch, ‘Qualitative Research: Overview, Design and Grounded Theory,’ in *Introduction to Social Research: Quantitative and Qualitative Approaches* (London, Sage, 1998).

¹¹¹ Irene Korstjens and Albine Moser, ‘Series: Practical Guidance to Qualitative Research. Part 2: Context, Research Questions and Designs,’ *European Journal of General Practice*, Vol.23, No.1 (2017), pp. 274-279; see also Denzin and Lincoln, *Handbook of Qualitative Research*.

¹¹² Sharan B. Merriam, *Qualitative Research: A Guide to Design and Implementation* (San Francisco: CA, John Wiley, 2014).

¹¹³ Denzin and Lincoln, *Handbook of Qualitative Research*, p. 3.

¹¹⁴ For a typology of qualitative analysis techniques, refer to Gery Ryan and H. Russell Bernard, ‘Data Management and Analysis Methods,’ in Denzin and Lincoln, *Handbook of Qualitative Research*, pp. 769-802.

Categorization was used to facilitate the search for patterns, meanings, and criteria. A systemic organization of crucial information was achieved through a process of inductive content analysis. This organization subsequently aided in the ability for criteria to be identified, compared, and contrasted. Since qualitative methods are best used to understand, contextualize, and interpret information, this method proved especially important when analyzing the reactions and perceptions of the media, government officials, and foreign states on the Soleimani strike. A qualitative method was used in this project's data collection stage to ensure that multiple information sources could be considered.

Moreover, this dissertation also relied upon qualitative document analysis. Simply put, information was obtained from existing documents, news reports, government statements, among others available in the public domain. Relevant information from these sources was then gathered and used to develop the theoretical framework and support particular arguments, positions, or claims. There were many reasons why qualitative research methods were chosen for this project. For example, discourse analysis of US government statements would not have been considered if quantitative methods were used. Discrepancies in government statements, ensuing media criticism and political fallout could not be quantified effectively. There was also insufficient information to compile concrete quantitative data sets or deploy analytical systems such as NVivo.¹¹⁵

Scholars have long discussed the weaknesses of customary international law. Some even claiming that such legal provisions can neither constrain nor regulate state behaviour. As such, it would be impractical to attempt to quantify malleable and obscure elements into a quantitative study. Instead, this project relied heavily on scholarly sources while using qualitative methods to engage these enigmatic legal conditions peripherally. The goal is to develop a framework capable of evaluating the legitimacy of pre-attack self-defence operations.

¹¹⁵ Pat Bazeley, 'The Evolution of a Project Involving an Integrated Analysis of Structured Qualitative and Quantitative Data: From N3 to NVivo,' *International Journal of Social Research Methodology* Vol.5, No.3 (2002), pp. 229-243.

Some might question why interviews were not conducted for this dissertation. Quite simply, interviews would have failed to contribute anything new to this project since the raw intelligence on the Soleimani strike remains highly classified. Even those privy to such knowledge, like US officials in the ‘Gang of Eight,’ found it difficult to obtain intelligence on the strike. Non-Disclosure Agreements restricted others from officially sharing their knowledge or opinion on the topic. Moreover, a forensic historical narrative reconstruction was not the primary aim. Accordingly, this project opted to rely on information garnered from secondary sources, which reported the information known to some high-ranking US government officials. This is offset by the fact that it is customary for cabinet rank officials to share ‘finished intelligence’ or the broad contours of analysis quite widely with the media – in other words, we have been told what they were told.¹¹⁶

Academic works, official government statements, international laws, and news reports formed this project's foundation. It would be unrealistic to assume that more information on the strike could be better collected or assessed by a different research method since the available information was, for the most part, socially engrained. Speeches, statements, reactions, and opinions on the Soleimani strike came in the form of written documents—all of which are best analyzed and categorized qualitatively. Thus, qualitative research methods were found to be best suited for the aim of this dissertation. Still, insight was solicited from US government officials throughout this dissertation's writing. Upon learning of this project's topic and aim, many officials were quite eager to engage in conversation—provided that information discussed would remain strictly confidential and, therefore, would not be directly reported nor quoted in this project. As such, this dissertation was written with the unofficial support of several key high-ranking US government officials.¹¹⁷

¹¹⁶ Thomas C. Ellington, ‘The Most Transparent Administration in History? An Assessment of Official Secrecy in the Obama Administration's First Term,’ *Public Integrity* Vol.15, No.2 (2013), pp. 133-148.

¹¹⁷ Without divulging identities, these individuals were either part of the US drone programme or privy to the intelligence about the January 2020 Soleimani operation. This data might be categorized as ‘off the record briefings’ rather than formal interviews.

As noted previously, qualitative methods offered many benefits in this dissertation. The most important of which was the ability to put a phenomenon in context—something that quantitative data finds somewhat tricky to achieve. Although data may be consistent, and findings can be generalizable, the ability to derive meaning from an event or phenomenon is a limitation of quantitative research methods. Qualitative research, on the other hand, does not face such an impediment. Still, this research method is not without faults. It is necessary to point out that there are also some disadvantages to using this chosen methodology. Guest et al. noted that ‘time available invariably determines the size and scope of a study.’¹¹⁸

As expected, this dissertation's research was highly time-consuming as multiple sources were simultaneously releasing information regarding the Soleimani strike. Data collection began immediately following the Soleimani strike and proceeded during the entire writing stage of the dissertation to keep on top of the wave of information being released. The aim was to ensure that information was collected as soon as it became available to curtail the possibility of sifting through mountains of data. This real-time information collection also aided in understanding the different perspectives of various groups. For instance, there were many cases in which sources were conversational. When one source would assert a particular idea or opinion on the Soleimani strike, then another would contradict or support the preceding source's statements. This was most evident in the case of US government statements. Finding these sources and arranging them in this manner, and then triangulating was another reason why the data collection and analysis were time-consuming. Still, this could not be avoided.¹¹⁹

In order to mitigate this issue, meticulous planning and a high level of organization were utilized. Reading, coding, interpreting and reporting information required considerable energy and time. However, this was not a dissuading factor. Since only one central case study was used, a ‘targeted’ approach could be taken, which assisted the data collection and analysis, as the focus

¹¹⁸ Greg Guest, Emily E. Namey and Marilyn L. Mitchell, ‘Qualitative Research: Defining and Designing,’ in *Collecting Qualitative Data: A Field Manual for Applied Research* (London: Sage Publications, 2013), p. 19.

¹¹⁹ Davies, ‘Spies as Informants.’

was made on one particular event rather than a longitudinal study, for instance.¹²⁰ Another disadvantage that accompanied the use of qualitative methods surrounded the issue of potential researcher bias. However, being aware of this beforehand allowed for steps to be made to ensure that a certain level of objectivity was achieved and maintained.¹²¹ Many tactics were therefore undertaken, including the diversification of sources. However, in this project, researcher bias was not as pertinent as all collected information originated from secondary or tertiary sources. The selection of these sources occurred in real-time and was centred on their relevance, with no concern given to political inclination.

A contemporary case study, specifically the US drone strike on Iranian General Qasem Soleimani, was then chosen as the main focus of this dissertation. The reasoning behind this was two-fold. First, the attack happened relatively recently, so its political and strategic military effects could be analyzed in near real-time. Second, this operation was highly contested, with the US government failing to convince its critics of the necessity or legality of said attack. Some journalists had attempted to examine the strike, but they arrived at conclusions through rather superficial, irregular and perhaps subjective means of analysis.¹²²

Since the legitimacy of this case was widely questioned and scrutinized, an opportunity to study this operation rather more methodically presented itself. The fundamental goal was to develop a means to ascertain the Soleimani strike's legitimacy within a robust set of parameters. Thus, to achieve this, a universal framework needed to be developed, which could, thereafter, be used to analyze other instances of state-sponsored pre-attack self-defence, not just the Soleimani strike. Thus, this project relied on a descriptive and interpretive case study analyzed through qualitative methods. A case study approach is useful when analyzing a dynamic event or an event that is still in progress. This is because the gathered information from multiple sources offers to change information on the event while still maintaining its context.

¹²⁰ Greg Guest, Kathleen M. MacQueen and Emily E. Namey, *Applied Thematic Analysis*, (Thousand Oaks, CA: Sage Publications, 2012).

¹²¹ The potential for researcher bias was lessened by the fact that the author is Canadian—and therefore a neutral party examining the political fallout between the US and Iran.

¹²² In fairness, this reflects to tight publication timelines in the realm of journalism.

Jane Ritchie and Jane Lewis posited that case study research consists of a ‘multiplicity of perspectives rooted in a specific context.’¹²³ These multiple sources of data collection are then used in conjunction with this case study approach. These can include archival research, interviews or observation. For this dissertation, archival research, observations, and document review of recent reports and government briefings were selected. These contributed to ‘thick description,’ whereas context, meaning and social understanding were garnered through this form of observation and data collection.¹²⁴

The purpose of case study research is ‘not to prove but to improve.’¹²⁵ In cases where it is difficult to discern the variables of an event from its context, then a case study approach is most effective.¹²⁶ It is perhaps most evident in the case of the Soleimani strike, as government reports seemingly shifted with each passing day. There are, however, supposed pitfalls to using a case study approach. These may include a lack of statistical generalisability and researcher bias. Still, these are common issues that plague the entire qualitative field—and can easily be avoided by ensuring that collected data is of high quality, and the interaction with this data remains objective and verifiable. Nevertheless, there have been several scholars who have argued that case study research can be generalized. For example, Norman Denzin and Yvonna Lincoln suggested that ‘looking at multiple actors in multiple settings enhances generalisability.’¹²⁷ Thus, this dissertation focused on the main case study with several other peripheral cases for historical context and background.

The data collected in this dissertation also centred around this case study approach. The purpose of this was to enhance inquiry validity by narrowing the breadth of the research undertaken. Since ‘a qualitative case study examines a phenomenon within its real-life context,

¹²³ Jane Ritchie and Jane Lewis, *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (London: Sage Publications, 2003).

¹²⁴ Robert K. Yin, ‘Case Study Research: Design and Methods,’ in *Applied Social Research Methods*, Vol. 5, (London: Sage Publications, 2003).

¹²⁵ Daniel L. Stufflebeam, George F. Madaus, and Thomas Kellaghan, *Evaluation Models: Viewpoints on Educational and Human Services Evaluation* (Boston, MA: Kluwer Academic, 2nd ed., 2000), p. 283.

¹²⁶ Yin, ‘Case Study Research: Design and Methods.’

¹²⁷ Denzin and Lincoln, *Handbook of Qualitative Research*.

data are collected on or about a single individual, group, or event.’ The primary purpose is to study the case in question, derive an understanding of the phenomenon taking place, and apply this to other cases. Thus, inquiry in these types of studies focuses mainly on their defining case features and the ‘differences they exhibit from other individuals/events in the larger population... [to] tease out what makes them so different and why.’¹²⁸

Subsequently, the Soleimani case study also served as a relevant event to examine the program's legitimacy within which this strike was authorized. This dissertation sought to build upon the current knowledge on the subject by determining whether there was a discrepancy between what the US claimed to do and what it did concerning its drone counter-terror program. Therefore, the Soleimani case embodies and conceptualizes the issues and concerns that many scholars have had about the US counter-terrorism program. It also clearly demonstrates the political fallout that can ensue due to flawed policies, the catalysts of which can be traced back to the drone strike on Qasem Soleimani.

The data collection for this project centred around the Soleimani case study. Sources were selected for their relevance, credibility and quality. Preference was given to government press releases, official statements, academic articles and legal documents. When these were unavailable or scarce, which was understandable due to the event's ongoing nature, reliable reports from established media outlets were used instead. In addition to the Soleimani case, several peripheral case studies were also employed to provide context, background and support for claims made therein. During the analysis stage, significant focus was paid to the triangulation of the information collected. Information was provided in a relatively chronological format to achieve this aim—with each source responding to (or building upon) the information raised within a preceding report.

The qualitative research used in this dissertation was both inductive and iterative in its analysis. It was inductive because the theories and patterns formed naturally during the research and data collection process, rather than being assumed or established ex-ante.¹²⁹ In other words,

¹²⁸ Guest, Namey and Mitchell, ‘Qualitative Research: Defining and Designing,’ p. 28.

¹²⁹ David Thomas, ‘A General Inductive Approach for Qualitative Data Analysis,’ *The American Journal of Evaluation*, Vol. 27, No.2 (2003), p. 27.

the research objectives simply guided this research. This approach is somewhat different from the deductive approach taken in quantitative research, where the main goal is to address a hypothesis or prove the validity of facts.¹³⁰

Furthermore, the research was also iterative, as the data collection process required that sources be read and re-read to draw conclusions or identify key themes and meanings. Through this method, the philosophical observations and scholarly suggestions of the aforementioned three ‘scholars of focus’ were discovered, compiled, and used to create the theoretical framework. During the research for this project, the steps taken were informed by Terre Blanche, Kelly and Durrheim. They argued that an effective project requires a researcher to follow specific steps: familiarization and immersion, introducing themes, coding, evaluation, the emergence of story and more significant meaning.¹³¹ After data was collected and themes were identified, open coding was used to break down the different parts of the case study examined into conceptual categories. This collection method allowed for the information gathered to be qualitatively observed, compared and evaluated. Then, inductive reasoning was used to determine the significance and necessity of these conditions in relevant operations. In doing so, this resulted in the fulfilment of the last step, as identified by Terre Blanche, Kelly and Durrheim—namely, the ‘emergence of meaning.’

Finally, establishing research objectives for this dissertation required what might be called a process of challenge. It was ‘critical to ensuring data are collected in such a way as to be useful.’ The primary study objectives were to identify, explore, describe, explain, assess, and evaluate the Soleimani strike's significance in the context of pre-attack self-defence and the general US counter-terrorism program. Since qualitative research methods were best suited to achieve these objectives and answer the main research queries raised in this dissertation, this analysis method was used.¹³²

There were also several limiting factors encountered during the development and writing of this dissertation. For instance, a significant amount of available intelligence on the strike was

¹³⁰ See for example Jatin Pandey, ‘Deductive Approach to Content Analysis,’ in *Qualitative Techniques for Workplace Data Analysis* (London: IGI Global, 2019), pp. 145-169.

¹³¹ See Terre Blanche, Kelly, and Durrheim, *Why Qualitative Research*, pp. 271-284.

¹³² Guest, Namey and Mitchell, ‘Qualitative Research: Defining and Designing,’ p. 18.

classified or not publicly disclosed. Fortunately, this had little impact on the research objectives of this dissertation. This project's primary purpose was to determine if the strike could be perceived as legitimate and what impact this conclusion might have on the greater US counter-terror program. This perception of legitimacy does not, however, require access to full intelligence or information.

Since a significant number of US government officials were also 'left in the dark' about full intelligence disclosure on the strike, their perceived view of the legitimacy of the operation was formed from available information.¹³³ Still, rather than infer the Soleimani strike's legitimacy by the degree of available intelligence, this dissertation took a much different 'bottom-up' approach. A list of necessary conditions (derived from legal and scholarly sources) was developed to compensate for this lack of readily available 'raw' intelligence. These were then examined to determine which conditions were necessary for an operation to be deemed legitimate and lawful under the customary practice of pre-attack self-defence. These findings were then compiled into table format and compared against the known information from the Soleimani strike. In the end, this table provided a logical and effective means from which to assess the legitimacy of the Soleimani strike.

It is important to note here that more information or intelligence regarding the strike could have under-pinned a stronger assessment of the strike's legitimacy. However, while this project was greatly aided by the fact that this dissertation's author has deep ties to the counterterrorism and intelligence field, resource availability significantly impacted collecting additional primary data. Since the author is a Canadian citizen undertaking doctoral studies at a UK institution, scholarship and bursary opportunities were extremely limited. The financial strain, alongside the Covid-19 pandemic implications, impacted this project's research design, which ultimately required to complete the project remotely and without in-person fieldwork, focusing instead on sourcing relevant data and related information from a broad range of sources to address any intelligence gaps.

¹³³ Arguably, if open-source information was sufficient for high-ranking US officials to determine the legitimacy of the strike, then it would subsequently also be sufficient for this project.

International Law: Origins, Practice and Compliance

International laws are based on voluntary consent and participation. Nations agree to subject themselves to the commonly agreed-upon rules of conduct, and if necessary, to account when violating them.¹³⁴ Despite appearances, however, international law—especially customary international law, is ambiguous and often inapplicable to modern circumstances.¹³⁵ In particular, since 1945, it has struggled to deal with situations that occupy the mezzanine floor between war and peace, including insurgency, terrorism and what Mary Kaldor has called ‘New Wars.’¹³⁶ This can invite commentators to interpret international law in a self-serving manner, proving rather problematic in the era of modern low-intensity armed conflicts.¹³⁷

How Pertinent is International Law?

Eminent scholars, like Karl P. Mueller, have argued that the flexibility and ambiguity of international law are of particular concern. He noted that, at present, international law is sufficiently ambiguous to provide countries like the US a legal loophole from which to justify preemptive use of force.¹³⁸ In recent years, the UN Rapporteur on Counter-terrorism has taken an increasingly negative view of preemptive action. Therefore, it is unlikely that international law will be amended to allow such policies, such as those advocated in the recent US National Security

¹³⁴ American Law Institute, ‘Restatement of the Law, The Foreign Relations Law of the United States’ St. Paul Minnesota: *American Law Institute Publishers* (1987), Section 102.

¹³⁵ Karl P. Mueller et. al., *Attacking in Self-Defence: Legality and Legitimacy of Striking First, from Striking First: Preemptive and Preventative Attack in US National Security Policy* (Santa Monica: RAND Publishing, 2006), p. 48; see also Jack S. Levy, ‘Preventive War and Democratic Politics: Presidential Address to the International Studies Association, March 1, 2007, Chicago,’ *International Studies Quarterly* Vol.52, No.1 (2008), pp. 1-24; and Colin S. Gray, *The Implications of Preemptive and Preventive War Doctrines: A Reconsideration* (Carlisle PA: Army War Coll Strategic Studies Inst., 2007).

¹³⁶ Mary Kaldor, *New and Old Wars: Organised Violence in a Global Era*, (New York: John Wiley, 2013); see also Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed Books Ltd., 2014); and Stathis N. Kalyvas, “‘New’ and ‘Old’ Civil Wars: A Valid Distinction?” *World Politics* Vol.54, No.1 (2001), pp. 99-118.

¹³⁷ Mueller et. al., *Attacking in Self-Defence*, pp. 47-48.

¹³⁸ *Ibid*, p. 47.

Strategy (NSS). It seems reasonable to observe that, as it stands, if an operation is carried out, which appears illegal from the perspective of the international community, this might subsequently impact the perceived legitimacy of the state in question.

For the time being, many scholars believe it might be wise for the US to refrain from participating in attacks that are preemptive in nature to avoid the perceived illegality of its actions and prevent the numerous negative consequences which accompany it. At least until some clarity regarding the legality of pre-attack self-defence is achieved, or unless, of course, the state has sufficient evidence to convince other parties that its actions are legitimate by acquiring proof of an imminent attack or adherence to current legal criteria.¹³⁹ The standards of proof required by an international court are often high, as witnessed by the UK in the case of the UK SAS shootings in Gibraltar in 1988.¹⁴⁰

Michael J. Glennon, a Professor of International Law at Tufts University, has maintained that states no longer consider laws that attempt to regulate the use of force as compulsory or binding. In Glennon's view, the international realm is comprised of two parallel, and somewhat incompatible, systems—one which he calls *de jure*, and the other *de facto*. A system governed by laws and 'illusory rules' is referred to as the realm of *de jure*, whilst that characterized by actual state practice makes up the *de facto* system. He argues that the 'decaying *de jure* catechism is overly schematized and scholastic, disconnected from state behaviour, and unrealistic in its aspirations for state conduct.'¹⁴¹

Accordingly, if we follow this line of argument, it is the *de facto* system that should be, at the very minimum, obeyed by all states to ensure perceived legitimacy in its practices. If this is not observed, then more significant examination and analysis are necessary to determine whether

¹³⁹ Ibid, p. 48.

¹⁴⁰ Juliet Chevalier-Watts, 'A Rock and a Hard Place: Has the European Court of Human Rights Permitted Discrepancies to Evolve in their Scrutiny of Right to Life Cases?' *The International Journal of Human Rights* Vol.14, No.2 (2010), pp. 300-318.

¹⁴¹ Michael J. Glennon, 'The Fog of Law: Self-Defence, Inherence, and Incoherence in Article 51 of the United Nations Charter,' *Harvard Journal of Law and Public Policy*, Vol. 25, No.2 (2002), pp. 539-558, 540 (Glannon argues that the Cuban Missile Crisis was illustrative of the decaying *de jure* system).

the action(s) can still be regarded as legitimate or lawful. Herein lies the core matter of this dissertation. What of laws which seemingly straddle both systems? For instance, the right to preemptive self-defence is a customary legal right that can be categorized as an 'illusory rule' under the *de jure* system. However, since no strict defining parameters have been set to outline its use within international law clearly, state practice has been historically entrusted with redefining it.

As the recent US drone strike on Gen. Soleimani illustrates, the simple claim to the right of pre-attack self-defence in state practice is not sufficient to denote legitimacy. Adhering to these 'illusory rules' by abiding by the criteria of imminence and necessity, tied to the right of pre-attack self-defence, must also be evident. If this is not achieved, then a state could risk the potential weakening of its perceived legitimacy, among other consequences.

The Increasing US Disregard for International Law

International law requires that civilians be protected, and that military weapons and tactics be restricted.¹⁴² The first and, some may argue, the most critical aspect concerns itself with the protection of civilians and all those who can no longer fight (either as a result of injury or surrender). However, as will be examined later in this chapter, the practices of targeted killing, signature strikes, and even double-tapping all demonstrate that even this basic consideration is no longer afforded. It is worth observing that the issue here is not with the drone itself as a new instrument. Rather, the problem emanates from the programs and strategies which employ its usage.

¹⁴² ICRC, 'Advisory Service on International Humanitarian Law,' *International Committee for the Red Cross*, (July 2004), p. 2; see also Christine Gray, *International Law and the Use of Force* (Oxford University Press, 2018); and Derek W. Bowett, *Self-defence in International Law* (London: The Lawbook Exchange, 2009); see also Jack M. Beard, 'America's New War on Terror: The Case for Self-Defense under International Law,' *Harvard Journal of Public Policy* Vol.25 (2001), pp. 559; Oscar Schachter, 'The Right of States to Use Armed Force,' *Michigan Law Review* Vol.82, No.5 (1983), p. 1620; Christopher Greenwood, 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq,' *San Diego International Law Journal* Vol.4, No.1 (2003), p. 7; and Jordan J. Paust, 'Use of Armed Force Against Terrorists in Afghanistan, Iraq, and Beyond,' *Cornell International Law Journal* Vol.35, No.3 (2001), p. 533.

These increasingly dangerous practices also throw into relief an international legal system unable to accommodate these new forms of modern armed conflicts sufficiently. This observation brings us to the second requirement. Current international law finds itself unable to address these advancements in military weapons and strategies, much less restrict them. Simply banning drones is not the answer, despite what some of the more strident critics might argue.¹⁴³ If practices that violated international law happened with drones, it could stand to reason that this could happen with other more advanced weapons in the future as well. Instead, the more substantive issue lies within the US ‘culture of legal rationalization.’ The Obama administration began this when they aimed to establish ‘plausible legality’ for its risky military operations. To achieve this, Rebecca Sanders claims that they ‘exploited and manipulated ambiguities and loopholes in the law, claiming that enhanced interrogation techniques, targeted killing, and other dubious practices were compatible with existing legal rules’—which they were not.¹⁴⁴

Philip Alston, a Professor of Law and UN Rapporteur on extreme poverty and human rights, concluded that the United States is ‘purposefully confusing the lines between military and intelligence work and domain... [attempting to evade] responsibility and accountability’ to international law.¹⁴⁵ CIA operatives are no more formal military combatants than the terrorists themselves. As such, their control over the US drone programme poses puzzling legal and moral issues. Some have even argued that we are witnessing an action-reaction cycle, with terrorists are employing prohibited weapons and increasingly ‘dirty’ war tactics in response to the increasingly unaccountable practices carried out by the CIA through their drone war on terror—‘otherwise, they

¹⁴³ Elisabeth Schweiger, ‘The Lure of Novelty: “Targeted Killing” and Its Older Terminological Siblings,’ *International Political Sociology* Vol.13, No.3 (2019), pp. 276-295.

¹⁴⁴ Rebecca Sanders, *Plausible Legality: Legal Culture and Political Imperative in the Global War on Terror* (Oxford: Oxford University Press, 2018), pp. 3-4; see also Peter S. Henne, ‘Assessing the Impact of the Global War on Terrorism-on-Terrorism Threats in Muslim Countries,’ *Terrorism and Political Violence* (2019), pp. 1-19; and Tanisha M. Fazal, ‘Plausible Legality: Legal Culture and Political Imperative in the Global War on Terror,’ *Perspectives on Politics* Vol.17, No.2 (2019), pp. 498-499.

¹⁴⁵ Ibid, p. 76; see also Fred Aja Agwu, ‘Drones in International Humanitarian Law’, *IHL, from Armed Drones and Globalization in the Asymmetric War on Terror: Challenges for the Law of Armed Conflict and Global Political Economy* (New York, Routledge, 2018), p. 212; and Noam Lubell and Nathan Derejko, ‘A Global Battlefield? Drones and the Geographical Scope of Armed Conflict,’ *Journal of International Criminal Justice* 11.1 (2013), pp. 65-88.

[would] be easily outnumbered, outgunned, and vanquished.’¹⁴⁶ From the information now available about the US drone program, it can be reasonably deduced that throughout the global war on terror, as Sanders suggests, American policymakers ‘manipulated the law to permit what it should constrain.’¹⁴⁷

Moreover, the wider international community is aware that the US drone programme has violated customary law, amongst other legal doctrines. However, many states have refrained from publicly denouncing these practices for fear of future diplomatic issues. Unconstrained by these considerations is the United Nations. There is a growing consensus amongst international legal scholars that, within four years, the United States was ‘practically indicted in three separate reports of the United Nations Special Rapporteurs’ (2010, 2013, and 2014). These conclusions were reached after examining the US methods and strategies in its asymmetric engagements with supposed terrorists.¹⁴⁸ Despite America’s careful practices of ‘plausible legality’ and its ‘culture of legal rationalization,’ the UN reports, as mentioned above, concluded that the US drones strikes violated international law and did not adhere to the criteria of self-defence necessary to legitimize its continued ‘global war on terror.’¹⁴⁹

In response to these UN findings, the European Parliament adopted a resolution on military drones in armed conflict, which reaffirmed the need for international actors to investigate drone strikes and seek prosecution for actions that violate international laws.¹⁵⁰ Lassa Oppenheim, a

¹⁴⁶ Fred Agwu, *The Jurisprudence of New and ‘Unregulated’ Weapons*, from *Armed Drones and Globalization in the Asymmetric War on Terror: Challenges for the Law of Armed Conflict and Global Political Economy* (New York: Routledge Research in the Law of Armed Conflict: New York, 2018), p. 128.

¹⁴⁷ Sanders, *Plausible Legality*, p. 3.

¹⁴⁸ Agwu, ‘Drones in International Humanitarian Law, IHL’, pp. 209-210.

¹⁴⁹ See also Stanley McChrystal et. al., *Team of Teams: The Power of Small Groups in a Fragmented World* (New York: Portfolio, 2015), pp. 130-1; and Kevin Jon Heller, ‘One Hell of a Killing Machine: Signature Strikes and International Law,’ *Journal of International Criminal Justice* Vol.11, No.1 (2013), pp. 89-119.

¹⁵⁰ Melanie De Groof, ‘Death from the Sky: International Legal and Practical Issues on the Use of Armed Drones,’ in A. Zavrsnik (ed.) *Drones and Unmanned Aerial Systems*, (Geneva: Springer, 2016), p. 151; see also Andrew C. Orr, ‘Unmanned, Unprecedented, and Unresolved: The Status of American Drone Strikes in Pakistan Under International Law.’ *Cornell International Law Journal* Vol.44, No.3 (2011), p. 729; and Ruth Blakeley, ‘Drones, State Terrorism and International Law,’ *Critical Studies on Terrorism* Vol.11, No.2 (2018), pp. 321-341.

renowned German jurist, claimed that international law must adapt to the changing nature of warfare—‘so long as such adaptation is not inconsistent with the fundamental rules of warfare and, in particular, with the distinction between combatants and non-combatants.’¹⁵¹ However, most legal scholars argue that instead, the United States must reconcile its drone programme with current international law, ensuring that the indiscriminate practices resulting in severe collateral damages be avoided.¹⁵²

Legal Perspectives & Key Areas of Disagreements

Several variables have a direct bearing on the use of force in self-defence.¹⁵³ These areas include (i) vagueness of language in the UN Charter and other legal doctrines, (ii) the debate about whether to limit the force a state can use, or allow them to ensure their collective security unrestricted by stringent legal parameters (as those found in Article 51 of the UN Charter), (iii) which sources of intelligence should be acceptable, and how preconceived notions could influence the conclusions drawn from the intelligence acquired (which is problematic due to subjectivity and ability to perceive a threat when it might not exist), and lastly, (iv) fundamental differences in state practice—some are non-interventionist, others not. Some states will be (as can be historically demonstrated) more aggressive than others or have differing military capabilities.¹⁵⁴

It is frequently observed that international law offers more scope for contestation than its domestic equivalent. Different schools of thought have different methodological approaches, which inevitably lead to differing conclusions. Some of these approaches mean focusing more on

¹⁵¹ Lassa Oppenheim, *International Law: A Treatise*, Vol.2 (London: Longman, 1944), p. 470.

¹⁵² Agwu, *The Jurisprudence of New and ‘Unregulated’ Weapons*, p. 130; see also Daniel Byman, ‘Why Drones Work: The Case for Washington’s Weapon of Choice,’ *Foreign Affairs* Vol.92 (2013), p. 32; and Megan Braun and Daniel R. Brunstetter, ‘Rethinking the Criterion for Assessing CIA-Targeted Killings: Drones, Proportionality and Jus ad Vim,’ *Journal of Military Ethics* Vol.12, No.4 (2013), pp. 304-24.

¹⁵³ Ashley S. Deeks, ‘Taming the Doctrine of Preemption,’ Chapter 29 from *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015), p. 669.

¹⁵⁴ Murphy, ‘The Doctrine of Preemptive Self-Defence,’ pp. 710, 738; see also Laurie Calhoun, ‘The Strange Case of Summary Execution by Predator Drone,’ *Peace Review* Vol.15. No.2 (2003), pp. 209-214; and Peter Bergen and Katherine Tiedemann, ‘The Year of the Drone.’ *New America Foundation* Vol.24 (2010).

state practice or treaty language.¹⁵⁵ In summary, as Deeks observes, there still exists disagreement on the use of force in situations where an attacks' imminence cannot be established.¹⁵⁶

Legally speaking, there are three central international bodies capable of arbitrating whether the US used force lawfully. The first is the UN Security Council, although this particular body would probably never pass judgement as the US holds veto power. The second is the International Court of Justice (ICJ). Like the Security Council before it, the ICJ would also find it difficult to pass judgement as the US has not participated in any related treaty, which would offer the prospect of compliance. By contrast, the International Criminal Court (ICC) contains some potential.¹⁵⁷ The ICC deals with several legal issues, but the most experience and breadth of practice is in war crimes, making it the most applicable body to judge whether a state used force lawfully in armed conflict.¹⁵⁸ If a request is received to review an activity that is claimed to have been committed in self-defence is sent to the ICC, and its legality is proven, then the actions are not only widely viewed as lawful—but legitimate as well.¹⁵⁹

It is the 'unquestioned legality of an action [which] generally confers legitimacy upon it.' The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) served as a precursor to this. ICTY was a focused court of law, together with an investigatory apparatus set up by the United Nations to prosecute war crimes in the 1990s in the former Yugoslavia, which granted the UN the right and responsibility to determine legitimacy in a particular armed conflict. Thus, the use of force can be viewed as legitimate if it is lawfully used in self-defence, authorized by the UN Security Council, or investigated by the ICC and deemed adherent to international laws

¹⁵⁵ Ibid, pp. 720-21.

¹⁵⁶ Deeks, 'Taming the Doctrine of Preemption,' p. 669; see also Frédéric Mégret, 'The Humanitarian Problem with Drones,' *Utah Law Review* No.5 (2013), p. 1283.

¹⁵⁷ Mueller et. al., *Attacking in Self-Defence*, p. 74; see also Allen Buchanan and Robert O. Keohane, 'Toward a Drone Accountability Regime,' *Ethics & International Affairs* Vol.29, No.1 (2015), pp. 15-37.

¹⁵⁸ United Nations, 1998, Article 8.

¹⁵⁹ Mueller et. al., *Attacking in Self-Defence*, p. 86 (Mueller argues that legitimacy and legality are inextricably linked); see also Steven J. Barela, *Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs* (London: Routledge, 2016).

(be they customary or entrenched).¹⁶⁰ However, with preemptive force,¹⁶¹ legitimacy could be questioned since the legal justification for an attack (that has not yet occurred) is more difficult to prove.¹⁶²

Although both legitimacy and legality, as aforementioned, are intrinsically linked—several essential differences between the two must be identified and discussed. Legality is based on the law; thus, any action is assessed based on its adherence or violation of said legal parameters. Actions that are deemed legal are subsequently considered legitimate. However, this cause-and-effect relationship does not go both ways. An action can be viewed as legitimate but may not be in accord with the law for a variety of reasons. Perhaps undertaken for moral reasons or obligations, these actions can be viewed through a legal lens as unlawful and yet perceived as legitimate by the international community. The legality of the war in Kosovo is an event that perfectly illustrates this conundrum. Despite obvious infringements on international law, ‘many observers viewed the action [of US military intervention] as legitimate largely because the perceived purpose of the action was for humanitarian need.’¹⁶³

¹⁶⁰ Ibid. p. 86 (‘Thus, an action is viewed as legitimate if it is expressly authorized (as opposed to implicitly authorized) by the Security Council or if the action was taken in self-defence to repel an ongoing attack’); see also Sarah E. Kreps and Geoffrey PR Wallace, ‘International Law, Military Effectiveness, and Public Support for Drone Strikes,’ *Journal of Peace Research* Vol.53, No.6 (2016), pp. 830-844.

¹⁶¹ Scholars disagree on the instances in which states claim anticipatory self-defence. See, for example, Franck, *The Power of Legitimacy Among Nations* p. 59, providing several instances in which a state claimed it acted out of anticipatory self-defence, including the United States in imposing a naval quarantine on Cuba in 1962 and Israel in attacking Egypt in 1967, with Christine Gray, *International Law and the Use of Force*, pp. 112-113, arguing that a state rarely claims it acted out of anticipatory self-defence and, in particular, that neither the United States nor Israel claimed anticipatory self-defence to justify their action against Cuba and Egypt, Jordan, and Syria, respectively.

¹⁶² Mueller et. al., *Attacking in Self-Defence*, p. 86.

¹⁶³ It could also be argued that the action was viewed by many as being legitimate because it was conducted by NATO and not because of a perceived moral purpose. This misstates the causation. NATO conducted the action because its member states, among others, approved of the action, and the NATO states approved of the actions because its perceived purpose was a moral one. Thus, the support of NATO, and many other nations, did not cause the action to be legitimate. Rather, the perceived moral purpose caused the NATO states to support the action and caused the action to be viewed as legitimate.

According to Mueller, legality is judged by adherence to existing laws, whereas legitimacy is determined by a measured debate taking into account the consequences of said actions.¹⁶⁴ In other words, do the ends justify the means? This is perhaps just one of many questions that, although not intrinsically tied to any legal doctrine, still play a significant role in determining a particular action's legality at a subliminal level. Therefore, an action can still be viewed as legitimate if the outcomes it produces are favourable, even though the initial action would have been deemed illegal by the standards outlined in international law. Thus, perceptions of legitimacy often stem from this consequentialist perspective.¹⁶⁵

As surmised, legitimacy can be derived from public sentiment. Abraham Lincoln, the 16th President of the United States, rather eloquently noted that 'public sentiment is everything. With it, nothing can fail; against it, nothing can succeed. Whoever moulds public sentiment goes deeper than he who enacts statutes or pronounces judicial decisions.'¹⁶⁶ In Lincoln's view, legitimacy is derived from adherence to the law and public sentiment. In this so-called 'court of public opinion,' legitimacy on an action or decision can be acquired. Much like the intervention in Kosovo, when the law fails to impart legitimacy on the action immediately, it is the public sentiment that often is used in substitution to gauge legality.¹⁶⁷

Naturally, the law is not the only element to continuously evolve. Legitimacy, and perceptions of legitimacy, also shift over time. For instance, Israel's preventative attack against Iraq's Osirak nuclear reactor in 1981 was firmly criticized by the UN Security Council immediately following the incident. Within days, the Council passed a resolution which 'strongly condemn[ed] the military attack by Israel' and ruled that its actions were 'in clear violation of the

¹⁶⁴ Mueller et. al., *Attacking in Self-Defence*, p. 88; see also Michael N. Schmitt, 'Drone Attacks Under the Jus ad Bellum and Jus in Bello: Clearing the Fog of Law,' *Yearbook of International Humanitarian Law* (TMC Asser Press, 2011), pp. 311-326; and Kinga Tibori-Szabó, 'Self-Defence and the United States Policy on Drone Strikes,' *Journal of Conflict and Security Law* Vol.20 No.3 (2015), pp. 381-413.

¹⁶⁵ Ibid. p. 89.

¹⁶⁶ David Zarefsky, 'Public Sentiment Is Everything: Lincoln's View of Political Persuasion,' *Journal of the Abraham Lincoln Association*, Vol.15, No.2 (1994), pp. 23-40; see also Jennifer Wallner, 'Legitimacy and Public Policy: Seeing Beyond Effectiveness, Efficiency, and Performance,' *Policy Studies Journal* Vol.36, No.3 (2008), pp. 421-43.

¹⁶⁷ Mainly when dealing with customary international law and state practice

Charter of the United Nations and the norms of international conduct.’¹⁶⁸ Even the United States, along with other members of the Security Council, publicly and unanimously agreed with the resolution.¹⁶⁹ Most legal scholars at the time also echoed this sentiment and challenged not only the legality of the action but also the legitimacy of the strike.¹⁷⁰

A decade later, new evidence emerged which revealed that the Iraqi nuclear programme had advanced to a level that would have made it capable of supplying nuclear weapons to Saddam Hussein’s regime. With these new revelations, many scholars and states changed their view on the Osirak attack Israel launched years earlier—concluding that ‘Israel did the world a great service’ by terminating the Osirak nuclear reactor.¹⁷¹ Thus, even a decade later, the legitimacy of Israel’s action increased with the introduction of new evidence to prove imminence and the legal concept of ‘necessity.’¹⁷² Nevertheless, what is clear is that, while related, legality and legitimacy are assessed quite differently. Legality is evaluated and inferred by a select group of experts, whereas legitimacy is drawn more widely from public perception. Compared to legality, legitimacy is a more ambiguous concept influenced by a variety of factors and opinions. As a result, any preemptive attack has a somewhat better chance of being considered legitimate rather than legal. Although legality is what states aim for when exercising their foreign policy, lawmakers and politicians would take legitimacy rather than naught. Indeed, decision-makers are more interested in establishing legitimacy than legality in government matters.¹⁷³ This is the case because, like Fareed Zakaria, an American journalist and political scientist, has recognized, ‘legitimacy is the

¹⁶⁸ United Nations, *Resolution 487 (1981) of 19 June 1981*, S.C. Res. 487, UN SCOR, 36th Sess., 228th Mtg., UN Doc. S/Res/487, 1981.

¹⁶⁹ Anthony D’Amato, ‘Israel’s Air Strike Against the Osirak Reactor: A Retrospective,’ *Temple International and Comparative Law Journal*, Vol. 10 (1996), pp. 259-264; see also Whitney Raas and Austin Long, ‘Osirak Redux? Assessing Israeli Capabilities to Destroy Iranian Nuclear Facilities,’ *International Security* Vol.31, No.4 (2007), pp. 7-33; and Erich Follath and Holger Stark, ‘How Israel Destroyed Syria’s Al Kibar Nuclear Reactor,’ *Spiegel Online* 11 (2009), pp. 22-26.

¹⁷⁰ Mueller et. al., *Attacking in Self-Defence*, p. 86.

¹⁷¹ D’Amato, ‘*Israel’s Air Strike Against the Osirak Reactor*,’ pp. 259-260.

¹⁷² Mueller et. al., *Attacking in Self-Defence*, p. 89; see also Andrew Garwood-Gowers, ‘Israel’s Airstrike on Syria’s Al-Kibar Facility: A Test Case for the Doctrine of Pre-emptive Self-Defence?’ *Journal of Conflict & Security Law* Vol.16, No.2 (2011), pp. 263-291.

¹⁷³ Mueller et. al., *Attacking in Self-Defence*, p. 90; see also Neta C. Crawford, ‘The Justice of Preemption and Preventive War Doctrines,’ in *Just War Theory*, (Palgrave Macmillan: New York, 2005), pp. 25-91.

elixir of political power.’¹⁷⁴ With it, one can govern with ease. Without it, a sociopolitical backlash, both national and international, may abound.

Self-Defence & the Law

Though international laws may seem sensible and straightforward, their origins are frequently rather improbable. Precedent-setting cases are often so unorthodox that they were once inconceivable in lawmakers' minds that they were left unaddressed. As a result of these exotic cases, which are nevertheless precedent-setting, laws are developed or amended over time. The legally important ‘Caroline Affair’ is just one such case and is pertinent to this thesis.

From 1817-1849, the ‘Reform Movement of Upper Canada’ launched a protest against British colonial rule in the region.¹⁷⁵ William Lyon Mackenzie, a journalist and politician who was elected the first mayor of Toronto in 1834, was one of the movement's leaders.¹⁷⁶ He had strong ideas for reform and sought to make British rule more accountable and less corrupt.¹⁷⁷ Mackenzie had been repeatedly elected to serve on the Legislative Assembly of Upper Canada but had grown increasingly disgruntled over the years as his ideas for reform were shot down.¹⁷⁸ In 1837, Mackenzie realized that change could not come by peaceful means, as the government had been unwilling to consider reform options. It was at this point that he considered alternative options.¹⁷⁹

¹⁷⁴ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: Norton 2004) p. 3.

¹⁷⁵ Carol Wilton, *Popular Politics and Political Culture in Upper Canada 1800-1850* (Montreal/Kingston: McGill-Queens University Press, 2000), pp. 51–114; see also David Mills, *Idea of Loyalty in Upper Canada, 1784-1850* (McGill-Queen's Press-MQUP, 1988), pp. 93-132.

¹⁷⁶ Charles Lindsey, *William Lyon Mackenzie* (Toronto: Kessinger, 2004), pp. 1-564; F.H. Armstrong, *William Lyon Mackenzie, First Mayor of Toronto: A Study of a Critic in Power*, (Toronto: University of Toronto Press, 1967), pp. 309-331.

¹⁷⁷ See for example William Kilbourn, *The Firebrand: William Lyon Mackenzie and the Rebellion in Upper Canada*, (Toronto: Dundurn, 2008), pp. 1-288.

¹⁷⁸ William Lesueur, *William Lyon Mackenzie* (Toronto: McGill-Queen's Press, 1979), pp. 53-68.

¹⁷⁹ *Ibid*, pp. 88-103.

In December of 1837, Mackenzie launched the Upper Canada Rebellion against the British at the ‘Battle of Montgomery’s Tavern.’¹⁸⁰ It ended just as quickly as it started. Mackenzie’s rebels were outnumbered and outgunned by the British and were subsequently defeated in an hour. Mackenzie then fled to Navy Island in the middle of the Niagara River to establish what he declared as the ‘Republic of Canada.’¹⁸¹ He reached the island on board an American ship, the *SS Caroline*. And here, our story begins.

On the night of 29 December 1837, the Mackenzie rebellion, backed by US citizens,¹⁸² boarded an American ship named the *SS Caroline* and fled to Navy Island. There they moored the ship at Schlosser’s Landing, a small fortification on the shores of Western New York.¹⁸³ Alexander McLeod, a Scottish-Canadian sheriff in the Niagara region, tipped off Sir Allan MacNab, a Canadian loyalist, and Andrew Drew, the Captain of the British Royal Navy, as to the activities carried out by the Mackenzie rebels.¹⁸⁴ The British then acted on this information. They crossed into American waters, boarded the *Caroline*, pulled the ship into the middle of the river, set it ablaze and waited for the current to take it over the Niagara Falls.¹⁸⁵ In removing the crew from the ship, the British engaged the Americans in a firefight—resulting in the death of Amos Durfee, an American watchman.¹⁸⁶ Five months later, thirteen Canadian and American rebels retaliated

¹⁸⁰ Edward Humphreys, *Great Canadian Battles: Heroism and Courage Through the Years*, (Toronto: Arcturus, 2013), Ch. 5; see also Michael D. Stevenson, ‘Guns Across the River: The Battle of the Windmill, 1838 by Donald Graves,’ *The Canadian Historical Review* Vol.83, No.4 (2002), pp. 606-608.

¹⁸¹ Kilbourn, *The Firebrand*, pp. 1-288.

¹⁸² Americans had wholeheartedly supported the Canadian independence movement and had supplied weapons, manpower, supplies, funds and even outposts from where to attack/spy on the British.

¹⁸³ Louis Henkin et. al., *International Law: Cases and Materials*, 3rd ed., (St. Paul, MA: West Publishing, 1993), p. 872.

¹⁸⁴ See R. Y. Jennings, ‘The Caroline and McLeod Cases,’ *American Journal of International Law*, Vol.32, No.1 (1938), pp. 82–99; Louis-Philippe Rouillard, ‘The Caroline Case: Anticipatory Self-Defence in Contemporary International Law,’ *Miskolc Journal of International Law*, Vol. 1, No.2, (2004), pp. 104-120.

¹⁸⁵ Nicolas J.S. Davies, ‘The Caroline Case and American Drone Strikes in Pakistan,’ *Peace Review*, Vol. 21, No. 4 (2009), pp. 429-436; see also Nguyen Van Sang, ‘The Caroline Affair and the Diplomatic Crisis between Great Britain and the United States, 1837–1841,’ *Prawo i Polityka* 8 (2018), pp. 73-83.

¹⁸⁶ Davies, ‘The Caroline Case and American Drone Strikes in Pakistan,’ pp. 429-436.

against the British. On May 29th, they captured and burned *Sir Robert Peel*, a British steamer, while in US waters.¹⁸⁷ Tensions between Canadians, Americans and the British led to a diplomatic crisis of sorts.

Following the Caroline incident, the United States quickly accused the British of having violated their territorial sovereignty. However, this allegation was refuted when the British argued that their actions were committed in self-defence.¹⁸⁸ This dispute over legality resulted in several official correspondences between the US Secretary of State Daniel Webster and the British Foreign Minister Lord Ashburton. In one particularly memorable exchange, Webster claimed that to be considered lawful, self-defence should be limited to cases in which the ‘necessity of self-defence is instant, overwhelming, and believing no choice of means, and no moment of deliberation.’¹⁸⁹ It took nearly four years of communications before the Webster-Ashburton Treaty was signed in 1842, which saw a resolution to the tensions—with both sides admitting partial guilt.¹⁹⁰

The ‘Caroline Affair,’ as it is now referred to, was a precedent-setting case that established the principle of preemptive self-defence within customary international law.¹⁹¹ This legal precedent holds that preemptive force in self-defence must only be used if the necessity for such leaves no other option. This requirement for necessity is referred to as the ‘Caroline Test.’¹⁹² As such, the Caroline incident was significant in that it resulted in a legal principle that has been entrenched in customary international law—permitting states to respond to an assault in progress

¹⁸⁷ John C. Carter, *The Burning of the Sir Robert Peel*, (Thousand Islands, 2013).

¹⁸⁸ Daniel Webster, ‘Letter to British Foreign Minister Lord Ashburton,’ August 6, 1842, in the US Department of State, Digestive International Law, Washington DC: US Department of State, 1906, p. 412, in Louis Henkin, Oscar Schachter, Richard C. Pugh, and Hans Smit, eds., *International Law: Cases and Materials*, 3rd ed., (St. Paul Minnesota: West publishing, 1993), p. 872.

¹⁸⁹ Webster, ‘Letter to British Foreign Minister Lord Ashburton,’ p. 873.

¹⁹⁰ John Bassett Moore, *A Digest of International Law*, Volume 2, (Government Printing Office, 1902), pp. 25, 409-410.

¹⁹¹ See also Gábor Kajtár, ‘The Caroline as the Joker of the Law of Self-Defence—A Ghost Ship’s Message for the 21st Century,’ *Austrian Review of International and European Law Online* Vol.21, No.1 (2019), pp. 1-25.

¹⁹² Christopher Greenwood, ‘The Caroline,’ in Max Planck Encyclopedia of Public International Law, *Oxford Journal of Public International Law*, April 2011.

or not yet completed.¹⁹³ If an attack (similar to that which occurred during the Caroline incident) is underway but not completed, it can be understood as ‘temporally imminent’ and therefore warrant a response in self-defence. Thomas Nichols, a professor of international affairs at the US Naval War College, has concluded that the destruction of a ship has created a legal precedent on the use of force, which still stands centuries later.¹⁹⁴ Thus, it was directly due to the Caroline case that the claim of self-defence became part of customary international law.¹⁹⁵

The case above illustrates the potential response of a state to an armed attack already in progress. But what if an attack that has yet to materialize? Can a state legitimately respond to armed attacks that have not begun? To address these questions, scholars developed and categorized three types of self-defence possibilities. The first is commonly referred to as anticipatory self-defence. As the name implies, it refers to self-defence, which precedes an impending attack.¹⁹⁶ The assault in question must be an armed, imminent attack planned by a state or non-state actor, and to which the victim state will have to use offensive force to address. The second possibility is referred to as preemptive self-defence. It is similar to the aforementioned anticipatory version, but knowledge of the attack is not as demonstrable. The attack is likely, and the resort to self-defence at this point is because the targeted state feels that it will result in significant harm/destruction—and targeting the threat before it manifests might be the best option for self-preservation.¹⁹⁷ The third and final option is referred to as preventative self-defence. It permits the use of force to prevent a future armed attack—without confidence in where or when that might be.¹⁹⁸ These three

¹⁹³ Deeks, *Taming the Doctrine of Preemption*, p. 662.

¹⁹⁴ Thomas Nichols, *The Coming Age of Preventive War* (Philadelphia: University of Pennsylvania Press, 2008), p. 2; see also Marc Trachtenberg, ‘Preventive War and US Foreign Policy,’ *Security Studies* Vol.16, No.1 (2007), pp. 1-31.

¹⁹⁵ R. Y. Jennings, ‘The Caroline and McLeod Cases,’ *American Journal of International Law*, Vol. 32, No.1 (1938), pp. 82–99.

¹⁹⁶ Michael Doyle, *Striking First: Preemption and Prevention in International Conflict*, (Princeton, NJ: Princeton University Press, 2008), p. 5; see also Scott A. Silverstone, *Preventive War and American Democracy* (London: Routledge, 2007); and Thomas M. Nichols, ‘Sovereignty and Preventive War in the Twenty-First Century,’ in *Preventive Force: Drones, Targeted Killing, and the Transformation of Contemporary Warfare* (2016), p. 88.

¹⁹⁷ See Murphy, ‘The Doctrine of Preemptive Self-Defence,’ p. 704; see also Deeks, ‘Taming the Doctrine of Preemption,’ p. 663.

¹⁹⁸ National Security Council, ‘The National Security Strategy of the United States of America.’ The 2010 National Security Strategy does not discuss anticipatory self-defence. See also, Matthew

terms can all be placed on a temporal scale, ‘with anticipatory self-defence closest to the full manifestation of the armed attack and preventative self-defence the furthest away.’¹⁹⁹ Now that a brief understanding of pre-attack self-defence has been achieved, greater clarification is needed on a range of legal terms.

Article 51 of the UN Charter clearly states that ‘[n]othing in the present charter shall impair the individual's inherent right for collective self-defence if an armed attack occurs against a member of the United Nations.’²⁰⁰ However, states, scholars and legal practitioners all question when a state may lawfully engage in self-defence. Can they do so in anticipation of an attack (‘anticipatory self-defence’), or do they have to wait to be attacked first before acting?²⁰¹ Customary international law, which existed before the UN Charter was established, allowed for anticipatory attacks, but only if they were undertaken in self-defence. Article 51, however, does not. It cites that states may only use preemptive force in the face of an ‘armed attack,’ not an anticipated one.²⁰² Oscar Schachter, a former Law Professor and UN legal aide, argued that self-defence under customary international law is limited in its usage—only applying to cases where an armed attack has already materialized.²⁰³ This happens to be the case because the criterion for the lawful use of preemptive force is drawn from the Caroline case—a case in which the armed attack had materialized.

Waxman, ‘The Use of Force Against States the Might Have Weapons of Mass Destruction,’ *Michigan Journal of International Law*, Vol.32, No.1 (2009), p.216.

¹⁹⁹ Deeks, ‘Taming the Doctrine of Preemption,’ p. 663.

²⁰⁰ United Nations, *Charter of the United Nations*, (San Francisco: United Nations, 1945), Article 2(4). Emphasis added.

²⁰¹ Mueller et. al, *Attacking in Self-Defence*, p. 53; see also Mark L. Rockefeller, ‘The Imminent Threat Requirement for the Use of Preemptive Military Force: Is It Time for a Non-Temporal Standard,’ *Denver Journal of International Law and Policy* Vol.33, No.1 (2004), p. 131.

²⁰² United Nations, *Charter of the United Nations*, Article 2(4); see also Andreas Laursen, ‘The Use of Force and (the State of) Necessity,’ *Vanderbilt Journal of Transnational Law* 37 (2004), p. 485; and Marco Roscini, ‘Threats of Armed Force and Contemporary International Law,’ *Netherlands International Law Review* Vol.54, No.2 (2007), pp. 229-277.

²⁰³ Oscar Schachter, ‘The Rights of States to Use Armed Force,’ *Michigan Law Review*, Vol. 82, No.5 (1984), pp. 1620-1646, 1633; see also Dino Kritsiotis, ‘When States Use Armed Force,’ in Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge: Cambridge University Press, 2004), pp. 45-79.

According to Law Professor Noam Lubell, self-defence can be justified in two ways. One is covered by international law, and the other is vaguely deduced from textual omissions or customary practices. If an attack has occurred or is in the process of occurring, then this form of self-defence can be evaluated by the existing legal provisions found in Article 51. If, on the other hand, the attack has not begun, then there is the potential that the threat might never materialize since an attack is anticipated but not certain.²⁰⁴ Thus, it would be categorized under the territory of anticipatory self-defence. The former is addressed more evidently in international law than the latter. Although the ICJ has yet to rule on anticipatory self-defence unequivocally, it has declared that self-defence cannot be used as a pretense to ‘protect perceived security interests’ beyond those identified in Article 51 of the UN Charter.²⁰⁵

Matters are made much more complicated by the rise of non-state actors. Does public international law marginalize non-state armed groups (NSAGs)? Perhaps. Is this ostracization helpful to states? Not always. By definition, non-state actors do not have a state, so to attack them, one must unlawfully enter a sovereign state in which they are located to attack them.²⁰⁶ This becomes problematic, as Article 2(4) of the UN Charter notes that entering into a third-party state without its knowledge or prior consent violates that state’s sovereignty and, by extension, international law. Unless, of course, there is sufficient justification to warrant such an action. To reach the threshold of ‘sufficient justification,’ a relationship between the non-state actor and the third state in question must be identified. When this is achieved, sufficient evidence must be found that results in one of two outcomes. The first would determine that the non-state actor was acting as an agent of the third state. The second would establish that the non-state actor's actions were

²⁰⁴ See Noam Lubell, ‘The Problem of Imminence in an Uncertain World,’ *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2018), p. 6; and Onder Bakircioglu, ‘The Right to Self-Defence in National and International Law: The Role of the Imminence Requirement,’ *Indiana International and Comparative Law Review* Vol.19 (2009), pp. 1-5.

²⁰⁵ ICJ, *Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)*, Judgement, ICJ Report 2005, para 148; see also Lubell, ‘The Problem of Imminence in an Uncertain World,’ p. 5.

²⁰⁶ Mueller et. al., *Attacking in Self-Defence*, p. 68; see also Jim Whitman, ‘Humanitarian Intervention in an Era of Preemptive Self-Defence,’ *Security Dialogue* Vol.36, No.3 (2005), pp. 259-74.

known to the third state, and it did nothing to address this threat—thereby violating its obligations to the international community and rendering external intervention lawful.²⁰⁷

Predictably there is a complex debate around the legal use of force against non-state actors. According to the United Nations Charter Article 2(4), states are expected to refrain from using force against a third-party state.²⁰⁸ As a UN member state, the United States is bound by this legislative body's articles and resolutions.²⁰⁹ However, like many laws—loopholes exist. According to the UN Charter, a state may launch an anticipatory attack under two conditions: (i) it has been preapproved by the UN Security Council, or (ii) it is done in self-defence.²¹⁰

International law is remarkably unclear whether it is permissible to cross into a third-party state to attack terrorists preemptively.²¹¹ Regardless, some of the basic parameters mentioned above are rather more self-evident and have existed in international law for some time. During the Cold War turmoil, the UN General Assembly even unanimously passed a resolution in 1985 which implored states to continue to abide by international law and refrain from participating, organizing or permitting terrorist acts of this kind against other nations.²¹² UN General Assembly resolutions

²⁰⁷ Ibid, pp. 65-75; see also Michael Bothe, 'Terrorism and the Legality of Pre-emptive Force,' *European Journal of International Law* Vol.14, No.2 (2003), pp. 227-40.

²⁰⁸ United Nations, *Charter of the United Nations*, San Francisco: United Nations, 1945, Article 2(4).

²⁰⁹ Mueller et. al., *Attacking in Self-Defence*, p. 50.

²¹⁰ Other doctrines may exist to permit the use of force—such as humanitarian intervention—but they are not relevant to the current discussion of their legal standing is uncertain. See, for example, Jianming Shen, 'The Non-Intervention Principle and Humanitarian Interventions Under International Law,' *International Legal Theory*, Vol.7, No.1 (2001), p. 1-32. ['the concept of humanitarian intervention has no actual legal basis and international law' and can only be exercised as collective intervention authorized by the security council] p.16; Amy Eckert, 'The Non-Intervention Principle and International Humanitarian Interventions', *International Legal Theory*, Vol.7, No1. (2001), pp. 49 – 58 (where sufficient cause exists, humanitarian intervention maybe exercised by the UN, regional organizations, ad hoc coalitions of state, and even single state); Louis Henkin, 'Kosovo and The Law of Humanitarian Intervention', *American Journal of International Law*, Vol. 93, No 4, 1999, pp. 824-28 (claiming that unilateral intervention by military force by a state or group of states is unlawful but recognizing the arguments of scholars who feel otherwise).

²¹¹ Mueller et. al., *Attacking in Self-Defence*, p. 70.

²¹² United Nations, 'Measures to Prevent International Terrorism Which Endangers or Takes Innocent Human Lives or Jeopardizes Fundamental Freedoms and Study of the Underlying Causes of Those Forms of Terrorism and Acts of Violence Which Lie in Misery, Frustration, Grievance

are not binding.²¹³ However, UN Security Council resolutions are binding to member states. So in 1992, the Security Council filled in this supposed legal ‘gap.’ Using the exact wording as the 1970 UN General Council resolution ensured that member states were now bound to the letter of the law.²¹⁴

Pre-Attack Self-Defence: Conditions & Requirements

Since antiquity, philosophers like Aristotle and Plato understood that ‘legitimacy has always had a primary importance in political reflection.’²¹⁵ The topic of political legitimacy was most notably examined in ‘The Social Contract,’ wherein Jean-Jacques Rousseau tried to answer what makes a government ‘legitimate.’ Since then, many political theorists have studied the concept of legitimacy and how it is affected by state actions. Still, few have paralleled the seminal works published by Thomas Franck, Seymour Lipset, David Easton, Robert Dahl, W.G. Runciman, Karl Deutsch, Lucian Pye, John Schaar and Carl Friedrich.²¹⁶

and Despair and Which Cause Some People to Sacrifice Human Lives, in an Attempt to Effect Radical Changes,’ G.A. Res. 40/61, *UN GOAR*, 40th Sess., Su. No. 53, UN Doc. A/40/53, 1985, p. 302.

²¹³ Mueller et. al., *Attacking in Self-Defence*, p. 69.

²¹⁴ United Nations, ‘Resolution 748 (1992) of 31 March 1992,’ S.C. Res. 748, *UN SCOR*, 47th Sess., 3063d Mtg., UN Doc. S/RES/748, 1992, p. 52; see also Justin Morris and Nicholas J. Wheeler, ‘The Security Council’s Crisis of Legitimacy and the Use of Force,’ *International Politics* Vo.44. No.2-3 (2007), pp. 214-231.

²¹⁵ Sergio Cotta, *Eléments d’une Phénoménologie de la Légitimité*, Institut International de Philosophie Politique, ed., *L’Idée de Légitimité*, (Press Universitaires de France, 1967), p.61; see also Peter G. Stillman, ‘The Concept of Legitimacy,’ *Polity*, Vol.7, No.1, (1974), p. 33.

²¹⁶ See Thomas M. Franck, *The Power of Legitimacy Among Nations*, (Oxford: Oxford University Press, 1990 (Franck was one of the first theorists to analyze the link between legitimacy and international law); Seymour Lipset, *Political Man* (New York: Anchor Books, 1963), Ch.3; David Easton, *A System Analysis of Political Life* (New York: John Wiley, 1965), pp. 278-310; Robert Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), Ch.5; W.G. Runciman, *Social Science and Political Theory* (Cambridge: Cambridge University Press, 1963); Karl Deutsch, ‘The Commitment of National Legitimacy Symbols as a Verification Technique,’ *The Journal of Conflict Resolution*, 7.3 (1963), pp. 360-369; Lucian Pye, *Aspects of Political Development* (Boston: Little, Brown, 1966), pp. 62-67; John Schaar, *Legitimacy in the Modern State*, in *Power and Community* (New York: Vintage, 1970); Carl Friedrich, *Man and His Government* (New York: McGraw Hill, 1963), Ch.13.

Legitimacy has been a topic that has long been debated, both for its theoretical shortcomings and unclear practical applications. Fittingly, the current conceptual understandings of legitimacy require further examination, as our current definitions are inapplicable, unconvincing, biased and weak.²¹⁷ This can be attributed, in part, to the fact that legitimacy, to some degree, is mercurial. Nicolas de Chamfort, the famous French writer, once reasoned that it might be easier to legalize an act than to make it appear legitimate.²¹⁸ For contextual clarity, the definition developed by Rodney Barker, a Political Science Professor, is chosen to serve as a foundational definition of the concept, upon which further clarifications will be applied. Barker reasoned that legitimacy could be understood as the moral obligation subjects feel towards obeying their states' command—because they believe in the righteousness of the state and its assumed authority.²¹⁹

Decades earlier, Peter G. Stillman, a Professor of Politics at Vassar College, recognized that a government gains further legitimacy when it ‘behaves itself’ in international affairs.²²⁰ However, this does not necessarily refer solely to adherence to international law. Friedrich, a notably eminent political scientist at Harvard who was also working for the CIA at the time, was the first to suggest that legitimacy does not imply legality.²²¹ Nor does an action require adherence to law for it to be seen as legitimate. Renowned French political philosopher, Raymond Polin, argued that legitimacy could also be attained if external states with neither vested interests nor personal ties to the nation being evaluated view its action(s) as permissible.²²² In other words, the

²¹⁷ Stillman, ‘*The Concept of Legitimacy*,’ pp. 32-39.

²¹⁸ Nicolas de Chamfort, *Mazimes et Pensées, Caractères et Anecdotes*, Garnier-Flammarion, 1975, p. 134 (‘Il est plus facile de légaliser certaines choses que de les légitimer’); see also John H. Schaar, *Legitimacy in the Modern State* (New York: Transaction Publishers, 1981).

²¹⁹ Rodney Barker, *Political Legitimacy and the State* (New York, Oxford University Press, 1990), p. 11; see also Allen Buchanan, ‘Political Legitimacy and Democracy,’ *Ethics* Vol.112, No.4 (2002), pp. 689-719.

²²⁰ P. Stillman, ‘The Concept of Legitimacy,’ *Polity*, Vol.7, No.1, (1974), p. 48; see also Stephen M. Weatherford, ‘Measuring Political Legitimacy,’ *The American Political Science Review* Vol.86, No.1(1992), pp. 149-166.

²²¹ Friedrich, *Man and His Government*, p. 234; see also Harold D. Lasswell and Abraham Kaplan, *Power and Society: A Framework for Political Inquiry* (New York: Transaction Publishers, 2013).

²²² Raymond Polin, *Analyse Philosophique de L’Idée de Légitimité*, L’Idée de Légitimité, pp. 22, 28.

verdict on the legitimacy of a particular state's action(s) must also include the opinions and judgement of external, unbiased states, unbiased at least in the simplistic sense that they do not enjoy a direct interest in the contested issue.

Following the Second World War, the United States drew its legitimacy from four key sources—namely, (i) its adherence to international laws and norms, (ii) respect for collective decision-making, (iii) reputation for restraint and fairness, and (iv) its association with the preservation of peace.²²³ The international community respected and trusted that the US's decisions would be legal (where possible) and just. Following the 9/11 attacks, the US showed a considerable disregard for the UN Security Council's input on its desire to invade Iraq,²²⁴ so US military operations were being called into question for their legitimacy, legality and morality.

This 'strategy of preemption' proved problematic for the UN, as imminent threats were difficult to prove and insufficient justification for attacking for self-defence. The invasion of Iraq by the US later proved to be a significant blow to its longstanding reputation and legitimacy. Even if WMDs had been found in Iraq, arguably, it still would have been insufficient to demonstrate imminence, as countries can possess weapons and have no intention to use them.²²⁵ Robert Jervis,

²²³ Robert W. Tucker and David C. Hendrickson, 'The Sources of American Legitimacy,' *Foreign Affairs*, Vol. 83, No.6, (2004), p. 24; see also Tara Ginnane, 'Separation of Powers: Legitimacy, Not Liberty,' *Polity* Vol.53 No.1 (2020); and Robert Kagan, 'America's Crisis of Legitimacy,' *Foreign Affairs* (2004), pp. 65-87.

²²⁴ John Yoo, 'International Law and the War in Iraq,' *The American Journal of International Law* Vol.97, No.3 (2003), pp. 563-76.

²²⁵ Consider, for instance, the nuclear arsenal that the United States and Russia in particular have amassed. As a result of the arms race, there are more than enough nukes in the world to destroy it many times over. However, countries, like the aforementioned hegemon, prefer to use them for deterrence purposes. This demonstrates that although these countries possess weapons capable of extreme destruction, neither poses an imminent threat due to the concept of mutually assured destruction and the resulting deterrence factor. By this same logic, the UN Security Council thought it was insufficient to start a war on the vague assumption and expectation that WMDs were present in Iraq, and that these would pose an imminent threat if the US would not immediately invade and secure them. See James Blight and Janet Lang, *Dark Beyond Darkness: The Cuban Missile Crisis as History, Warning and Catalyst*, (Lanham MD: Rowman & Littlefield, 2017).

one of the world's leading IR scholars, has argued that one of the most significant issues with preemption is the lack of precision of intelligence on either capability or intention.²²⁶

As such, the Bush Doctrine's perceived legitimacy, and indeed the United States more widely, was dealt a severe blow when no WMDs were found in Iraq, and no imminent threat could be demonstrated. Since the imminence factor could not be fulfilled, the next legitimacy source would be to examine its legality. Unfortunately, the Bush administration did not care if its war was lawful. It only wanted it to appear to adhere to the strategy of preventive war—to garner legitimacy from the public. Even before the 9/11 attacks, the George W. Bush administration exhibited a chariness towards international law. In the late 1990s, John Bolton, who later served as US Ambassador to the UN and the US National Security Advisor, claimed that it was against their interest to abide by international law because although it may seem beneficial to do so in the short-term, in the long-term, it would 'constrict the United States.'²²⁷ Immediately following the 9/11 attacks, President Bush appealed for the support of allied states in his decision to invade Iraq, explaining that 'either you are with us, or you are with the terrorists.'²²⁸ Of course, this statement was a binary fallacy of sorts. For opposition to the invasion of Iraq did not, in any way, equate to support for terrorists or WMD proliferation.

Nevertheless, Bush used the 9/11 attacks to further his administrations' longstanding goal of distancing itself from international law, and even some would claim domestic law on war powers. He proposed a new approach of preventive war, misleadingly referred to as the 'strategy of preemption,' which replaced the doctrines of deterrence and containment that had ensured peace and stability even during the Cold War. The US argued that the decision to go to war against Iraq was undertaken with the underlying desire to depose a tyrannical dictator—and that the lawfulness of this motivation should be sufficient enough to grant legitimacy to the entire operation.²²⁹ Different motivations were rotated in a manner that was, as at, best confusing.

²²⁶ Robert Jervis, 'Why the Bush Doctrine Cannot be Sustained,' *Political Science Quarterly* Vol.120, No.3 (2005), pp. 351-377.

²²⁷ Tucker and Hendrickson, 'The Sources of American Legitimacy,' pp. 23-27. Emphasis added.

²²⁸ Quote from the Transcript of President Bush's address to a joint session of Congress on 20 September 2001.

²²⁹ Tucker and Hendrickson, 'The Sources of American Legitimacy,' p. 24; see also Lea Brilmayer, *American Hegemony: Political Morality in a One-Superpower World* (New Haven:

Prior to the invasion, Colin Powell, the former Secretary of State, implored President Bush to seek authorization from the UN Security Council to obtain legitimacy in a last-ditch effort. At the UN, the US misleadingly claimed that no decision to go to war had been made and that Saddam could still curtail such a possibility if he cooperated. When it became clear that the UN would not lend its support for the Iraq invasion, and indeed that the French would likely veto any such proposition, the US then publicly declared that it would be launching a war and would appreciate the support from a 'coalition of the willing.' Thereby signalling that its allies' support in its military campaign would be optional, but any support garnered voluntarily would add legitimacy to the war.²³⁰

But was this declaration done in self-interest, or was it a legitimate call to arms in the face of an imminent threat? Ian Hurd, Associate Professor of Political Science at Northwestern University, noted that the outcomes of an event could determine whether it was undertaken as a result of self-interest, or whether it was, in fact, legitimate. According to Hurd, self-interest only creates outcomes that are favourable for the party which initiated them. In comparison, legitimate action creates outcomes that benefit all those in the broader community.²³¹

If the community believes that their interests are being considered and respected, they will support the government and its relevant actions. If not, the potential for protests, international sanctions and legal issues increases significantly. Jack Goldsmith and Eric Posner, distinguished

Yale University Press, 1996); and Robert W. Tucker and David C. Hendrickson, 'The Flip Side of the Record: The Commitment to Law Is Key to US Legitimacy,' *Foreign Affairs* (2005), pp. 139-141.

²³⁰ Ibid, p. 27; see also George W. Downs and Michael A. Jones, 'Reputation, Compliance, and International Law,' *The Journal of Legal Studies* Vol.31, No.1 (2002), S95-S114; Hannes Herbert Hofmeister, 'Neither the Caroline Formula nor the Bush Doctrine: An Alternative Framework to Assess the Legality of Preemptive Strikes,' *University of New England Law Journal* Vol.2, No1. (2005); and Aiden Warren and Ingvild Bode, 'Self-Defense in International Law: Preemptive/Preventive Requisites,' from *Governing the Use-of-Force in International Relations*, (London: Palgrave Macmillan, 2014), pp. 23-45.

²³¹ Ian Hurd, *Legitimacy and Authority in International Politics*, International Organization, Vol. 53, No. 2, (MIT Press, 1999), pp. 379-408; see also Andrew T. Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press, 2008); and Louis Henkin, *How Nations Behave: Law and Foreign Policy* (Columbia University Press, 1979).

American Law Professors and government practitioners, have argued that international law cannot force states to act against their self-interest. Thus, legal doctrines are limited in their powers and applications.²³²

Alexander Hamilton, one of the United States ‘founding fathers’, maintained that the ‘spirit of moderation in a state of overbearing power is a phenomenon that has not appeared, and which no wise man will expect ever to see.’²³³ Unsurprisingly, the international community has started to view the United States as an outcast—abiding by international laws only when convenient and ignoring them when it is not.²³⁴ Fittingly, if the US plans to reclaim its legitimacy, some scholars insist that it would have to change its ways and abandon the practices that have threatened its perceived legitimacy. The most damaging post-9/11 practices that have significantly eroded US legitimacy have included its unlawful Iraq invasion and the resultant problems like the unproven WMD threat and the reports of widespread torture and human rights violations perpetrated by American soldiers.²³⁵

Although many of these actions cannot be undone, what remains is to ensure that going forward, the US adheres (as much as possible) to international law, solicits the advice/input of relevant legal bodies, remains truthful about what evidence is informing their decisions all while reaffirming a commitment to peace. With the war in Iraq, the US never had a clear end goal. However, peace was undoubtedly not one of them.²³⁶ Thus, without a clear objective, evidence to

²³² Jack Goldsmith and Eric Posner, *The Limits of International Law* (Oxford: Oxford University Press, 2007), p.13; see also Harold Hongju Koh, ‘Why Do Nations Obey International Law,’ *Yale Law Journal* 106 (1996), p. 2599; and Jack L. Goldsmith and Eric A. Posner, ‘A Theory of Customary International Law,’ *The University of Chicago Law Review* Vol.66, No.4 (1999), pp. 1113-1177.

²³³ Quoted in David C. Hendrickson, *Republic in Peril: American Empire and the Liberal Tradition* (Oxford: Oxford University Press, 2017), p.65.

²³⁴ Tucker and Hendrickson, ‘The Sources of American Legitimacy,’ p.32.

²³⁵ Ibid, pp. 19, 27; see also Gary Ackerman and Michelle Jacome, ‘WMD terrorism,’ *Prism* 7.3 (2018), pp. 22-37; and Masahiko Asada, ‘Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation,’ *Journal of Conflict & Security Law* Vol.13, No.3 (2008), pp. 303-32.

²³⁶ Ibid, pp. 27-28; see also Raymond Hinnebusch, ‘The US Invasion of Iraq: Explanations and Implications,’ *Critique: Critical Middle Eastern Studies* Vol.16, No.3 (2007), pp. 209-28; and Anne Speckhard and Stefanie Mitchell, ‘Possibilities of Peace-Building in Iraq: Questions of

prove imminence, or support from the international community—legitimacy is very difficult to prove or attain. Moreover, military action authorized during a period of international mistrust seems futile. Legitimacy must be demonstrable, not self-declared or drawn from popular sentiment. President Trump has frequently cited public approval ratings to convince the public of a government actions' legitimacy. However, approval ratings are a categorically inadequate way to judge the legitimacy of an action. If public sentiment is the only measure used in a litmus test to infer legitimacy, the government which 'propagandizes most effectively, which socializes most efficiently, which manipulates public opinion best,' will draw a false positive in this regard.²³⁷

Current definitions of legitimacy are influenced by Friedrich-esque qualities, like evaluating public sentiment. In doing so, and especially in an age of rising popularism, this runs the risk of falsely attributing legitimacy to regimes which abuse or confuse their citizenry into acquiescence. By this definition, a popular autocratic leader could be falsely perceived as a legitimate one. Thus, the theoretical understanding of legitimacy is incompatible with standard practice, regardless of how aligned it might be to social science usage.²³⁸

Thus, legitimacy is derived from a messy combination of public sentiment, elite opinion and respect for the political and legal systems.²³⁹ A delicate balance must be drawn between the three political legitimacy sources, namely adherence to norms, respect for existing laws, and the degree of public consent. If one source is given precedence over others, as in the earlier discussion of legitimacy drawn primarily from public consent, then the resulting judgement can be quite deceptive.

The Condition of Imminence

Deradicalization and Reintegration amidst Sectarian Conflicts,' *International Center for the Study of Extremism* (2017).

²³⁷ Ibid, p. 27; see also John Yoo, 'War, Responsibility, and the Age of Terrorism,' *Stanford Law Review* 57 (2004), p. 793; and Daniel S. Gressang, 'Audience and Message: Assessing Terrorist WMD Potential,' *Terrorism and Political Violence* Vol.13 No.3 (2001), pp. 83-106.

²³⁸ Ibid, pp. 27-28; see also Karen J. Alter, 'The Contested Authority and Legitimacy of International Law: The State Strikes Back,' from *Christopher Daase and Nicole Dietelhoff eds. Beyond Anarchy: Rule and Authority in the International System*, (2018).

²³⁹ Stan Wiechnik, 'Political Legitimacy and Values,' *Small Wars Journal*, Vol.9 No.11 (2013).

Understandably, there has been increasing controversy regarding pre-attack self-defence since it is predicated upon probabilities of threats materializing.²⁴⁰ However, probabilities are a variable that must be considered since states have used these to garner an ‘illusion of certainty.’²⁴¹ Nevertheless, most scholars feel the reliance on this offensive form of self-defence should be limited to ‘absolute emergencies’—which is precisely how the concept of imminence should constrain the use of preemptive force. During these cases of ‘absolute emergencies,’ preemptive force should be viewed as legitimate as it abided fully by the concept of imminence.²⁴² The US has similarly argued that international law must redefine the concept of imminence to consider modern adversaries’ capabilities.²⁴³

In other words, the US has claimed that preemptive strikes must be legalized to effectively apply to new and contemporary threats that do not fulfil the standard criteria for imminence.²⁴⁴ The following section proceeds on the assumption that pre-attack self-defence may, in some cases, be a legitimate form of action—if the imminence of an attack can be established. Two following conditions must be satisfied to establish imminence. These are necessity and proportionality. The following sections will discuss the origins of the imminence test, its importance in state practice and its relevance in the face of modern threats. Imminence is a criterion used to refer to a specific, impending future event. It has been customarily used temporally to identify the point at which anticipatory self-defence merely becomes self-defence.²⁴⁵

²⁴⁰ See Robert Jervis, ‘Why Intelligence and Policymakers Clash,’ *Political Science Quarterly*, Vol.125, No.2 (2010), pp. 185-204; see also Gregory Johnsen, ‘US Military’s Ambiguous Definition of a Legitimate Target,’ *Sana’a Center for Strategic Studies* (2019).

²⁴¹ Noam Lubell, ‘The Problem of Imminence in an Uncertain World,’ *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2016), ‘Section V,’

²⁴² Ibid, ‘Section VII’; see also John Karlsrud, ‘Towards UN Counter-Terrorism Operations?’ *Third World Quarterly* Vol.38, No.6 (2017), pp. 1215-1231.

²⁴³ White House, ‘President Delivers State of the Union Address: The President’s State of the Union Address,’ United States Capitol, *The White House*, 2002.

²⁴⁴ Mueller et. al., *Attacking in Self-Defence*, p. 46.

²⁴⁵ Onder Bakircioglu, *Self-Defence in International and Criminal Law: The Doctrine of Imminence* (Abingdon: Routledge, 2011), p. 196; see also George Brandis, ‘The Right of Self-Defence Against Imminent Armed Attack in International Law,’ *The Australian Yearbook of International Law Online* Vol.35, No.1 (2018), pp. 55-66; and Nigel D. White, ‘The Joint Committee, Drone Strikes and Self-Defence: Caught in No Man’s Land?’ *Journal on the Use of Force and International Law* Vol.3, No.2 (2016), pp. 210-216.

The ‘Imminence Constraint’ is another essential aspect. The wording of the UN Charter challenged the customary practice of anticipatory self-defence. When Article 51 was drafted, it clearly stated that states might act in self-defence only if an armed attack occurs. That eliminated the anticipatory element. However, we might observe that Article 51 still retained the requirement of imminence. Debates were therefore triggered as to whether the practice of anticipatory self-defence should be viewed as illegal, since the UN charter purposely restricted any act of self-defence to one which is carried out as a response to an initial attack—therefore, not preemptive. This is a very contemporary issue, but it also casts a long historical shadow: Hugo Grotius reasoned that for anticipatory self-defence to be legitimate, the threat must be immediate.²⁴⁶

As noted earlier, the Caroline incident became a seminal reference point from which the element of imminence became a requirement to demonstrate the legitimacy of an action carried out in anticipatory self-defence.²⁴⁷ In his letter to Lord Ashburton, Daniel Webster admitted that exceptions to the law of self-defence could be made only in cases where threats are ‘instant, overwhelming, and leaving no choice of means, and no moment for deliberation.’²⁴⁸ Still, necessity is a difficult thing to prove, particularly when an attack has not occurred.²⁴⁹

In turn, the condition of necessity in pre-attack self-defence simply requires that all possible alternatives be exhausted before resorting to force. These include diplomatic negotiations, economic sanctions, or referring the issue to the UN Security Council. As such, force should only be used if all other alternatives have been exhausted, and the threat still has not been deterred.²⁵⁰

²⁴⁶ Hugo Grotius, *On the Law of War and Peace, De Jure Belli ac Pacis* (trans A. C. Campbell, London, 1814), Book II, Ch. 1, V.

²⁴⁷ Lubell, ‘The Problem of Imminence in an Uncertain World,’ p. 2; see also Renee Mastrolembro, ‘Imminence and State Right to Anticipatory Self-Defence: Responding to Contemporary Security Threats and Divergence in Legal Diplomacy,’ *Canberra Law Review* Vol.16, No.1 (2019), p. 143; and Vasja Badalič, ‘The War Against Vague Threats: The Redefinitions of Imminent Threat and Anticipatory Use of Force,’ *Security Dialogue* (2020).

²⁴⁸ Letter from Webster to Lord Ashburton, Department of State, Washington, 06 August 1842.

²⁴⁹ See Mueller et. al., *Attacking in Self-Defence*, p. 55.

²⁵⁰ Ibid., p. 56; see also Nigel D. White and Lydia Davies-Bright, ‘Drone Strikes: A Remote Form of Self-Defence?’ in *Research Handbook on Remote Warfare* (Edward Elgar Publishing, 2017).

Additionally, the ‘triggering event’²⁵¹ in question must be an ‘armed attack,’ which poses an imminent threat and is reasonably understood to occur in the immediate future.²⁵² However, issues arise when these requirements are applied to modern threats like non-state terrorism and cyber-attacks. It has to be conceded that neither the international community nor the global college of international law scholars has yet tackled these issues in-depth.

Nevertheless, Josef Kunz, a prominent law professor and jurist, has claimed that Article 51 was insufficient in stating when an attack may be imminent—leaving room for interpretation and opportunity for potential pre-attack self-defence justifications.²⁵³ In his view, states are granted a tacit opportunity to infer their actions' legality by deriving their interpretation of the law. But should the law be open to subjective inferences? Is not the purpose of the law to provide objective judgement and direction on how states should act?

The late Sir Derek W. Bowett, an academic and lawyer by profession, contended that although the wording of Article 51 may not completely restrict the customary practice of anticipatory self-defence if an imminent danger is present, it does, nonetheless, force states to wait for an armed attack to occur.²⁵⁴ The UN itself has seemingly recognized this discrepancy between law and practice. Ironically, even though the UN has omitted direct reference to anticipatory self-defence in its Charter, it supported publishing a report that argued in favour of a limited form of anticipatory self-defence. The report in question was published in 2004, entitled *Report of the Secretary General's High-Level Panel on Threats, Challenges and Change*. In part, it argued that a state could act in self-defence if it feels threatened, but only if the threat is real, and the response

²⁵¹ Defined in international law as the catalyst for conflict or the element which arouses suspicion. It is from this ‘triggering event’ that states attempt to justify their decisions to engage in pre-attack self-defence.

²⁵² Mueller et. al., *Attacking in Self-Defence*, pp. 56-57; see also Andrea Birdsall, ‘Drone Warfare in Counterterrorism and Normative Change: US Policy and the Politics of International Law,’ *Global Society* Vol.32, No.3 (2018), pp. 241-262.

²⁵³ Josef Kunz, ‘Individual and Collective Self-Defence in Article 51 of the Charter of the United Nations,’ *American Journal of International Law* Vol.41, No.4 (1947), pp. 872, 878.

²⁵⁴ Derek W. Bowett, *Self-Defence in International Law* (Manchester: Manchester University Press, 1958), pp. 191-192; see also Murray Colin Alder, *The Inherent Right of Self-Defence in International Law*, Vol. 19 (Springer Science & Business Media, 2012); and Kalliopi Chainoglou, ‘Reconceptualising Self-Defence in International Law,’ *King's Law Journal* Vol.18, No.1 (2007), pp. 61-94.

abides by the Caroline test requirements.²⁵⁵ In this report, imminence is a restriction, requirement, and determining factor of whether an action taken in anticipatory self-defence was legitimately undertaken.

Nonetheless, imminence is not the only constraint on anticipatory self-defence. According to scholars and legal practitioners, two other elements are necessary to ensure legitimacy in offensive self-defence. Necessity and proportionality, both derived from just war theory, are considered fundamental conditions necessary to prove the legitimacy of any claim to self-defence, not only anticipatory action.²⁵⁶ However, these conditions privilege recognized states while marginalizing non-state armed groups.

The imminence of a threat may be used as a test to determine the legitimacy of a state's response. The elements of proportionality and necessity can be measured to determine whether a resort to anticipatory pre-attack self-defence was lawful.²⁵⁷ Hence, imminence can be both a test and criterion (in addition to proportionality and necessity) in determining legitimacy.²⁵⁸ According to Lubell, imminence remains a condition separate from necessity. For instance, an armed attack could be imminent, but self-defence need not be the only alternative as many non-forcible responses could preclude the need for violent action. Conversely, and controversially, one might argue that there is a necessity to act in self-defence against a future attack that is not imminent.

²⁵⁵ United Nations, 'Report of the Secretary General's High-Level Panel on Threats, Challenges and Change,' from *A More Secure World: Our Shared Responsibility* (New York: UN, 2004), para 188.

²⁵⁶ ICJ, 'Military and Paramilitary Activities in and Against Nicaragua,' *Nicaragua v. United States of America*, Merits, Judgements, *ICJ Reports* (1986), p. 4, para 194; ICJ, 'Oil Platforms (Iran v. US),' Judgement, *ICJ Reports* 2003, para 51; ICJ, 'Legality of the Threat or Use of Nuclear Weapons,' Advisory Opinion, 08 July 1996, *ICJ Reports*, 1996, paras 41-43; and Lubell, 'The Problem of Imminence in an Uncertain World,' p. 3.

²⁵⁷ Bakircioglu, *Self-Defence in International and Criminal Law*, p. 213.

²⁵⁸ During his speech on the imminence requirement in anticipatory self-defence actions, the UK Attorney General discussed the 'two further conditions' of proportionality and necessity, House of Lords, Hansard, 21 April 2004, col 370.

The latter argument is at the heart of some of the most contentious areas of anticipatory self-defence.²⁵⁹

Accordingly, a growing number of scholars believe that preemptive action can be used legitimately as a form of self-defence if the imminence test is passed.²⁶⁰ According to Sir Daniel Bethlehem, barrister and former Legal Adviser to the UK Foreign and Commonwealth Office, scholarly disagreement on the subject have resulted in a ‘doctrinal divide’—with scholars who believe states have the power to address threats to their security on one side, and those who argue in favour of a more restrictive approach to the customary law of self-defence on the other.²⁶¹ When faced with modern threats like terrorism, the divide between these two positions grows more profound as the nature of modern threats is often unlike any previously experienced or potentially predicted by the Charter’s authors. Undoubtedly, this leads to further muddling of the law. Unsurprisingly, the source of this confusion is often technical and goes beyond its mere legal interpretation.

We now need to take a closer look at imminence. It is no wonder that the concept of imminence is so widely contested when even the simple definition of the word seems to vary depending on the source. The Oxford English dictionary defines ‘imminent’ as ‘about to happen,’²⁶² the Cambridge dictionary defines it as ‘coming or likely to happen very soon,’²⁶³ and

²⁵⁹ Lubell, ‘The Problem of Imminence in an Uncertain World,’ p. 3, and section IV; see also Lindsay Moir, *Reappraising the Resort to Force: International Law, Jus ad Bellum and the War on Terror* (Bloomsbury Publishing, 2010).

²⁶⁰ Report to the Secretary-General, delivered to the General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, 21 March 2005: para 124; United Nations, ‘Report of the Secretary General’s High-Level Panel on Threats, Challenges and Change’; Attorney General, House of Lords, Hansard, 21 April 2004: col 370; Tom Ruys, *Armed Attack and Article 51 of the UN Charter* (Cambridge: Cambridge University Press, 2011), pp. 324-342.

²⁶¹ Daniel Bethlehem, ‘Principles Relevant to the Scope of a State’s Right of Self-Defence Against an Imminent or Actual Armed Attack by Non-State Actors,’ *American Journal of International Law*, Vol. 106, No. 4 (2017), p. 4; see also Jörg Kammerhofer, ‘The Resilience of the Restrictive Rules on Self-Defence,’ *The Oxford Handbook on the Use of Force in International Law* (Oxford: OUP, 2013).

²⁶² Oxford Dictionary, Definition of Imminent, Retrieved 18 February 2020
<<https://oxforddictionaries.com/definition/english/imminent?region=uk&q=imminent>>

²⁶³ Cambridge Dictionary, Definition of Imminent, Retrieved 18 February 2020

the Merriam-Webster dictionary describes it as an action or event that is ‘ready to take place.’²⁶⁴ This divergence in everyday dictionary definitions depict imminence as ranging from something inevitable, like Oxford’s definition of ‘about to happen,’ and then gradually lessening in certainty with Cambridge’s definition of ‘likely,’ and finally the Merriam-Webster definition of an attack being ‘ready to take place’ but with no mention of whether it will materialize and therefore actually ‘happen.’

When attempting to apply the concept of imminence to the practice of anticipatory self-defence, ‘both the temporal aspect and the gap between certainty and likelihood, prove to be the primary areas of debate and concern.’²⁶⁵ Despite the lack of a clear definition, state practice, legal cases, and scholarly debates concur that a threat must be evident, specific and temporal.²⁶⁶ For a threat to be considered imminent, a few requirements must be met. Since imminence relies on the notion that an armed attack is anticipated to occur in the immediate future, it must therefore go beyond vague or abstract suspicions²⁶⁷ of a threat, and a tangible threat must be identified and proven—to the degree that this can be objectively recognized and verified.

Imminence is problematic in the context of modern threats. In 2006, John Reid, the UK Secretary of State for Defence, pondered whether imminence is even a sufficiently developed concept to address modern threats.²⁶⁸ Modern dangers, like the pervasive and transnational threat of terrorism, is, at its core, unpredictable.²⁶⁹ Subsequently, these threats pose a severe problem for national security and the relevance of imminence in such unprecedented cases. They also present

<<https://dictionary.cambridge.org/dictionary/english/imminent>>

²⁶⁴ Webster’s Dictionary, Definition of Imminent, Retrieved 18 February 2020

<<https://www.merriam-webster.com/dictionary/imminent>>

²⁶⁵ Lubell, ‘The Problem of Imminence in an Uncertain World,’ p. 4; see also Leo Van den hole, ‘Anticipatory Self-Defence Under International Law,’ *Amsterdam University International Law Review*, Vol.19, No.1 (2003), p. 69.

²⁶⁶ Ibid, p. 5.

²⁶⁷ See for example Emer de Vattel, *The Law of Nations*, Book II from the ed. by Joseph Chitty, (Philadelphia: Johnson & Co., 1883), Ch. IV, p.50.

²⁶⁸ John Reid, ‘Reid Addresses RUSI on ‘20th Century Rules,’ from *21st Century Conflict*, 03 April 2006.

²⁶⁹ Lubell, ‘The Problem of Imminence in an Uncertain World,’ p. 7; see also Steven J. Barela, ‘The Question of Imminence: A Historical View on Anticipatory Attacks,’ *Legitimacy and Drones, Investigating the Legality, Morality and Efficacy of UCAVs*. (London: Ashgate, 2015).

similar challenges to well-worn legal and ethical concepts such as proportionality. Terrorists, for instance, can operate covertly and launch attacks within very short timeframes, which can cause dreadful harm to the victim state—and the imminence of these particular attacks is very difficult to discern due to their non-state nature and covert planning.²⁷⁰ Recently, this *modus operandi* has been adopted by states—like the United States in its targeted killing of General Soleimani. Among other contemporary issues, these challenge the validity and applicability of pre-emptive armed attack imminence criteria.

As a result, critics have argued that this inapplicability to modern threats may have eliminated the very need for the requirement for imminence—since this potential threat source is mostly unknown and unpredictable. How can a state be expected to respond with urgency to a concrete threat when terrorism by nature is so fluid? Lubell eloquently presented this view when he reasoned that permitting the use of force against unspecific threats risks marking the start of a new era in the use of preemptive force.²⁷¹ At present, the notion of imminence ‘presents a brick wall’ which does not allow claims of state self-defence against non-state actors, like modern terror groups. So, either ‘such claims of self-defence must fail, or the requirement of imminence must be set aside.’ For instance, when presented with actionable intelligence on the threat posed by a terror group, the concept of imminence can be applied as if the threat emanated from a state.²⁷² It seems the presence of such credible intelligence about an imminent threat posed by a terror group would mean the requirement of imminence would not need modification. Instead, it can be applied in the same fashion as if the threat came from a state actor. This proof of imminence will always be

²⁷⁰ Mueller et. al., *Attacking in Self-Defence*, p. 57; see also Richard N. Haass, ‘Sovereignty: Existing Rights, Evolving Responsibilities, Remarks to the School of Foreign Service and the Mortara Center for International Studies, Georgetown University,’ *US Department of State*, Washington D.C., January 14, 2003 (practice of covertness by rogue regimes affects a states’ ability to demonstrate the imminence of the perceived threat).

²⁷¹ Lubell, *The Problem of Imminence in an Uncertain World*, p. 11; see also James A. Green, ‘The Ratione Temporis Elements of Self-Defence,’ *Journal on the Use of Force and International law* Vol.2. No.1 (2015), pp. 97-118.

²⁷² Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (Oxford: Oxford University Press, 2010), Ch. 1-3; see also Tom Ruys, *Armed Attack and Article 51 of the UN Charter: Evolutions in Customary Law and Practice*, Vol. 74 (Cambridge University Press, 2010).

required to justify a states' claim to self-defence unless, of course, the imminence requirement is scrapped or replaced in the future.²⁷³

When considering other threat sources, for example, those posed by WMDs, the issue becomes more about the potential consequences of an attack than about the credibility of the source of said threat.²⁷⁴ So, this would stand in place of evidence to demonstrate an impending threat, perhaps stressing an enemy attack (should it materialize) would result in the standard of imminence (currently required by international law) to be relaxed.²⁷⁵ The threat, or perceived threat, of WMDs, further complicates the issue of proportionality. Thus, the emergence of new threats, like non-state terrorism and WMDs, will inevitably test the imminence requirement's applicability.²⁷⁶ Perhaps developing a 'sliding scale of gravity' might illustrate the 'negative correlation between gravity and imminence, whereby the higher the gravity of the impending attack, the weaker the requirement of imminence becomes.'²⁷⁷ Further questions are raised regarding the gravity of a potential threat. However, in overall terms, it is expected that including gravity as a factor in the imminence assessment, it might allow for a more malleable interpretation of imminence than perhaps previously endorsed.

As already suggested, another requirement of imminence is proportionality. The impending attack must be proportional to the preemptive attack launched in self-defence for it to be legitimate. With all the issues swirling around the applicability and relevance of the imminence criteria,

²⁷³ Lubell, *The Problem of Imminence in an Uncertain World*, p. 8; see also Marko Milanovic, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford: Oxford University Press, 2011); and James A. Green, *The International Court of Justice and Self-Defence in International Law* (London: Bloomsbury Publishing, 2009).

²⁷⁴ See also Dennis R. Schmidt and Luca Trenta, 'Changes in the Law of Self-Defence? Drones, Imminence, and International Norm Dynamics,' *Journal on the Use of Force and International Law* Vol.5, No.2 (2018), pp. 201-245.

²⁷⁵ Ibid, see also Christopher Greenwood, 'International Law and the Preemptive Use of Force: Afghanistan, al Qaida, and Iraq,' *San Diego Journal of International Law*, No. 7 & 9, 2003 (who argues that if the threat is significant, one capable of causing another 9/11, then the notion of imminence can be relaxed to allow states to act in self-defence and prevent another such atrocity from taking place).

²⁷⁶ Christopher Greenwood et. al., 'Principles of International Law on the Use of Force by States in Self-Defence,' working paper, *Royal Institute of International Affairs*, October 2005.

²⁷⁷ Lubell, *The Problem of Imminence in an Uncertain World*, pp. 10-11.

theorists have pondered whether it might be easier to do away with the imminence requirement and develop new, more applicable standards of regulating self-defence practices.²⁷⁸ The US addressed the issue of incompatible imminence criteria in the face of modern threats within its National Security Strategy.²⁷⁹

Likewise, between 2002-2006, the UK House of Commons Foreign Affairs Committee published several reports on terrorism, questioning whether the imminence criteria should still stand as a useful indicator of legitimacy in light of these new threats. In 2003, the Committee advised that the British government attempt to redefine imminence to more evidently apply to current threats or develop a new measure (with international consensus) of regulating preemptive military action undertaken in self-defence.²⁸⁰ As a result, the remaining bolsters of the imminence criteria remain proof of credible intelligence, knowledge of the armed attack's potential gravity should it materialize, and adherence to necessity and proportionality principles. Alongside these complex debates, we also need to consider the related issue of certainty. For as long as the attack in question has not occurred, upon which the practice of anticipatory self-defence is predicated, the certainty of an attack cannot be sure until it materializes.²⁸¹ The greatest challenge lies in interpreting the intentions of the enemy. Sometimes even visible preparations for attack do not necessarily mean that the adversary will launch an attack.²⁸² As such, the requirement of

²⁷⁸ Ibid, pp. 9, 12; see also Christof Heyns, et al., 'The International Law Framework Regulating the Use of Armed Drones,' *International & Comparative Law Quarterly* Vol.65, No.4 (2016), pp. 791-827.

²⁷⁹ White House, 'The National Security Strategy of the United States of America,' *White House*, (2002) pp. 12-16; see also P.J. Meyer and Nigel D. White, 'The Twin Towers Attack: An Unlimited Right to Self-Defence?' *Journal of Conflict and Security Law* Vol.7 No.1 (2002), pp. 5-17.

²⁸⁰ UK House of Commons, 'Foreign Policy Aspects of the War Against Terrorism,' H.C., *Foreign Affairs Committee*, (2003), p. 196, para t.

²⁸¹ Robert Jervis, 'Why the Bush Doctrine Cannot Be Sustained,' *Political Science Quarterly*, Vol. 120, Issue 3 (2005), pp. 351-377; see also Robert Jervis, 'Understanding the Bush Doctrine: Preventive Wars and Regime Change,' *Political Science Quarterly* Vol.131, No.2 (2016), pp. 285-312; and Bledar Prifti, 'The Bush Doctrine in the Middle East: A New American Century,' in *US Foreign Policy in the Middle East* (Palgrave Macmillan, 2017), pp. 91-112; and Chris J. Dolan, *In War We Trust: The Bush Doctrine and the Pursuit of Just War* (Routledge, 2018).

²⁸² Mueller et. al., *Striking First*, p. 9 (In the eleventh hour, 'troops marching towards a border can be ordered to turn back; missiles being loaded might not be fired; and orders to carry out attacks can be rescinded in the final moment before an attack takes place).

imminence rests upon the notion of being reasonably confident of an impending attack.²⁸³ However, this vague requirement opens another veritable ‘Pandora’s box.’

If a state misjudges an action as threatening, it can lead to a false positive of the imminence criteria. This error could result in the unnecessary use of force and the potential for further negative consequences and increased tensions. On the other hand, underestimating an attack's imminence would result in a false-negative, leading to repercussions like high civilian casualties.²⁸⁴ It is not for nothing that Richard Betts has described a surprise attack as the supreme test of a modern nation-state's security mechanisms.²⁸⁵ As one would expect, states have a bias towards acting first, rather than risk failing to act. A simple assessment would identify that states operate following a ‘duality of error’ approach, wherein a state rationalizes that it would rather endure a false positive than a false negative.²⁸⁶ For the US, the 9/11 attacks will forever remain an ever-present source of anxiety, fear and grief. Culturally and historically, they amplify the long shadow of Pearl Harbor. Consequently, when evaluating present and future threats to its national security, the US government will almost always lean in favour of a false positive—in other words, a worst-case analysis. Thus, at least in a counter-terrorism context, the US would instead ask for forgiveness for overstepping the mark than confront its domestic population about a repetition of 9/11, an event often seen as an intelligence or pre-emption failure.²⁸⁷

²⁸³ Lubell, *The Problem of Imminence in an Uncertain World*, pp. 12-13.

²⁸⁴ Ibid, pp. 13-14.

²⁸⁵ Richard K. Betts, *Surprise Attack: Lessons for Defense Planning* (Washington: Brookings Institution Press, 2010).

²⁸⁶ The Duality of Error approach can best be understood through ‘Pascal’s Wager,’ developed and proposed by French philosopher and mathematician Blaise Pascal in the 17th century. He wondered whether it might be safer to believe in god even if there might not be one, or to live as if there was no god and deal with the risks should this presumption turn out to be false. For a more political take on this ‘duality of errors,’ see Kenneth Hammond, *Human Judgement and Social Policy: Irreducible Uncertainty, Inevitable Error, Unavoidable Injustice*, (Oxford: Oxford University Press, 1996).

²⁸⁷ Amy Zegart, *Spying Blind: The CIA, the FBI, and the Origins of 9/11* (Princeton: Princeton University Press, 2009).

Much then revolves around proof of an imminent attack. Reliable evidence seems to be the manner through which imminence can be determined.²⁸⁸ When dealing with the practice of self-defence, a state cannot base its decision to use preemptive force on ‘supposed intention,’²⁸⁹ ‘assumptions, expectations or fear of what is sometimes called a ‘latent’ threat,’²⁹⁰ or ‘state propensities.’²⁹¹ Accordingly, the threshold of evidentiary support must be strict about counterbalancing against inherently problematic threat assessments based on fallible conditions.²⁹² Due to the unpredictable nature of future attacks, there will always be controversy and debate regarding the concept of imminence—whether the requirement was satisfied sufficiently or whether it should be ignored altogether. To circumvent these quandaries, Lubell argues that a state must be sure of its threat assessments before even considering preemptive action.²⁹³ There are at least two flaws in this plan. First, no one can know, with absolute certainty, what the future holds. And second, a state may be reluctant to reveal the specifics of its threat assessments for fear of jeopardizing future streams of intelligence upon which its safety depends. In other words, the more certain a state is about an imminent attack, the more reluctant it may be to reveal its source of certainty.

So, in the absence of sufficient evidence to demonstrate the imminence of an attack, the armed attack's potential gravity could be used as sufficient justification to warrant preemptive use of force. Failing to address the threat in question could have severe consequences. Thus, if a state can effectively demonstrate the gravity of the potential attack, some legal scholars argue that it

²⁸⁸ Thomas Franck, *Recourse to Force: State Action Against Threats and Armed Attacks*, (Cambridge: Cambridge University Press, 2002), p. 107; see also Emer de Vattel, *Of the Mode of Terminating Disputes Between Nations*, Ch. XVIII, p. 334.

²⁸⁹ Hugo Grotius, *On the Law of War and Peace, De Jure Belli ac Pacis* (trans A. C. Campbell, London, 1814), Book II, Ch. 1, V.

²⁹⁰ Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge: Cambridge University Press, 2012), p. 206; see also Julius Stone, *Aggression and World Order: A Critique of United Nations Theories of Aggression* (London: The Lawbook Exchange, 2006).

²⁹¹ Franck, *Recourse to Force*, pp. 106-107 (‘Propensities, however, are obdurately unamendable to conclusive proof’).

²⁹² Philip Dunwoody and Kenneth Hammond, ‘The Policy of Preemption and Its Consequences: Iraq and Beyond,’ *Journal of Peace Psychology*, Vol.12., No.1 (2006), pp. 23-24; see also Michael W. Reisman, ‘Will a Policy of Preemptive Self-Defense Make Us All Safer?’ *Yale Law School, Public Law Research Paper* 638 (2018).

²⁹³ Lubell, *The Problem of Imminence in an Uncertain World*, p. 17.

compensates for the lack of proof regarding said attack's imminence. Another option, albeit unpopular and somewhat dangerous, is to reject the imminence criteria altogether. But this raises the very real issue of states potentially abusing the label of anticipatory self-defence for self-interested purposes. As such, the only answer is to understand and accept the potential issues posed by the criteria of imminence when faced with modern threats, but recognize that for anticipatory self-defence to be legitimately undertaken, it must be done so (i) in cases of absolute emergencies,²⁹⁴ (ii) when the available evidence objectively points to an impending armed attack, (iii) when the gravity of not acting outweighs the legal penalty of acting without sufficient justification, and (iv) leaving little to no time for the pursuit of alternative diplomatic means of addressing the threat.²⁹⁵ Simply put, military action by a state should be used as a last resort—when this is not possible, the response must be limited and proportional to the threat in question.²⁹⁶

Developments Which Challenge the Doctrine of Anticipatory Self-Defence

Following the attacks on 9/11, world leaders were much more inclined to launch preemptive strikes against adversaries who had not initiated hostilities.²⁹⁷ Former US Secretary of State, Donald Rumsfeld, argued that the best, and in some cases, the only defence against terrorists, is a good offence.²⁹⁸ And immediately following the 9/11 attacks, the international community quickly recognized the importance of acting in self-defence, particularly in the face of threats launched by non-state adversaries. Shortly after, the UN Security Council passed resolution 1368, which

²⁹⁴ UK House of Commons, 'Foreign Policy Aspects of the War Against Terrorism,' Foreign Affairs Committee, *UK House of Commons*, (2004), p.441-I, para 429 ('limit the use of the doctrine to a 'threat of catastrophic attack.').

²⁹⁵ Lubell, *The Problem of Imminence in an Uncertain World*, p. 17.

²⁹⁶ Daniel Bethlehem, 'Principles Relevant to the Scope of a State's Right of Self-Defence Against an Imminent or Actual Armed Attack by Non-State Actors,' *American Journal of International Law*, Vol.106, No.4, (2017), pp. 2, 6-8; see also Vivek Bhatt, *Constructing a Right to Counterterrorism: Law, Politics and the Security Council, Human Rights in Times of Transition* (Edward Elgar Publishing, 2020).

²⁹⁷ Mueller et. al., *Attacking in Self-Defence*, p.43.

²⁹⁸ Former Secretary of Defence, Donald Rumsfeld during a Pentagon Briefing on 18 Sept 2001 in Response to the 9/11 attacks.

categorized the 9/11 attacks as a ‘threat to international peace and security’ and reiterated states’ right to pursue collective or individual self-defence as specified in the Charter.²⁹⁹

The international legal community also recognized the need for clarifying how the global war on terror should be addressed in the letter of the law. The US, on the other hand, left the criteria for anticipatory attacks rather vague. Scholars have speculated whether this was intentionally done to allow justifications of questionable actions in the future. There is also deliberate ambiguity in US military practices and policies, assumed to be for the same reason.³⁰⁰

In his 2002 State of the Union address, former President George W. Bush argued that he would ‘not wait on events, while dangers gather... [nor] stand by, as peril draws closer and closer.’ He also declared that deterrence would not work against dictators, terrorists or those in possession of WMDs—so waiting for threats to materialize would be dangerous.³⁰¹ The 2002 National Security Strategy (NSS) explained the US view of offensive self-defence.³⁰² According to the NSS, the US can no longer afford to take a reactive posture, given the immediacy of modern threats and their potentially destructive nature.³⁰³

Thus, the US will not be deterred from striking first, even if there is a level of uncertainty about the threat’s nature or timing.³⁰⁴ The NSS maintains that covert threats exist, which should

²⁹⁹ United Nations, ‘Resolution 1368 (2001) Adopted by the Security Council at Its 4370th Meeting, on 12 September 2001,’ S.C. Res. 1368, UN SCOR, 56th Sess., 4370th Mtg., *UN Archives*, S/RES/1368, 2001.

³⁰⁰ Mueller et. al., *Attacking in Self-Defence*, pp. 43-4; see also Muhammad Nasrullah Mirza and Adil Sajid, ‘Use of Force in Self-Defence for Global Peace,’ *Strategic Studies* Vol.39, No.3 (2019), pp. 1-21.

³⁰¹ White House, ‘President Delivers State of the Union Address: The President’s State of the Union Address.’

³⁰² Mueller et. al., *Attacking in Self-Defence*, pp. 44-45.

³⁰³ White House, ‘President Delivers State of the Union Address: The President’s State of the Union Address,’ pp. 15 (‘We cannot let our enemies strike first... the greater the threat, the greater is the risk of inaction—and the more compelling the case for taking the anticipatory action to defend ourselves. To forestall or prevent such hostility by our adversaries, the United States will, if necessary, act preemptively.’).

³⁰⁴ Mueller et. al., *Attacking in Self-Defence*, p. 45; see also Nathan Leys, ‘Autonomous Weapon Systems, International Crises, and Anticipatory Self-Defense.’ *Yale Journal of International Law* 45 (2020), p. 377.

be sufficient reason to legally allow the practices of preemptive attacks—even if clear evidence does not exist.³⁰⁵ Over time, these covert threats provided the US government, and its intelligence agencies, with the basis for a claim to pursue questionable practices in the name of international security. In other words, covertness, with its implicit evasion of verification and proof, seemed to provide a platform for attacks with lower standards of evidence. This was very much an enabler at the heart of the drone program.

It is no state secret that former US President Barack Obama nurtured a particular affection for his military drones. What remains a secret, however, is how those lethal drone programmes operate. It should be noted that the shift from capture and interrogation to lethal drone strikes (be they targeted or signature in nature) began in 2006, under Bush and not Obama, partly under pressure from Europe. Obama simply accelerated this new direction.³⁰⁶ The longstanding practice of secrecy within the CIA-led lethal drone programme had allowed the Obama administration, in the view of many academics, ‘to violate the principle of right intention in its targeted killing campaigns.’³⁰⁷ The continued killing of low-level insurgents, coupled with secrecy and a general lack of transparency, show that this lack of right intention has continued even after the end of the Obama administration.³⁰⁸ Without transparency in the program's motivational and operational aspects, it becomes impossible to ensure proper regulation and independent oversight.³⁰⁹ Additionally, this continued aversion to transparency continues to violate the principle of legitimate authority.

³⁰⁵ White House, ‘President Delivers State of the Union Address: The President’s State of the Union Address,’ pp. 15.

³⁰⁶ Richard J. Aldrich, ‘US–European Intelligence Co-operation on Counter-terrorism: Low Politics and Compulsion,’ *The British Journal of Politics and International Relations* Vol.11, No.1 (2009), pp. 122-139.

³⁰⁷ Harry van der Linden, ‘Drone Warfare and Just War Theory,’ Chapter 9 in *Drones and Targeted Killing: Legal, Moral and Geopolitical Issues*, ed. Marjorie Cohn (Northampton Mass: Olive Branch Press, 2015), p. 173; see also Robert Paul Churchill, ‘Drone Warfare: Ethical and Psychological Issues,’ from *Unmanned Aerial Vehicles: Breakthroughs in Research and Practice* (London: IGI Global, 2019), pp. 452-468.

³⁰⁸ Ibid, pp. 173-174.

³⁰⁹ Scott Horton, *Lords of Secrecy: The National Security Elite and America's Stealth Warfare*, (New York: Nation Books, 2016); see also James Johnson, ‘Artificial Intelligence and Future Warfare: Implications for International Security,’ *Defense & Security Analysis* Vol.35, No.2 (2019), pp. 147-169; and Łukasz Kamiński, ‘Toward Robotic Warfare,’ from *The Future of US Warfare* (London: Routledge, 2017), pp. 192-207.

Even today, the US drone programme's lack of transparency still poses a severe oversight and accountability problem, especially with CIA-operated drones as opposed to DoD programs. This has led many, including close allies, to oppose their use for fear that their strategic value was tantamount to a general ambition to operate outside the law. Lesley Wexler, a Professor of Law at the University of Illinois, has argued that this lack of oversight and transparency threatens democratic values, erodes accountability and incites terrorist recruitment.³¹⁰ Even if the current approach is lawful, many worry that future administrations or other governments may adopt drone strikes without sufficient legal justifications. Rebecca Sanders, a political science professor, suggested that the US government capitalized on vague legal standards to authorize contentious strategies within its CIA-led drone program.³¹¹ In other words, a degree of moral panic around particular events has been exploited for a strategic purpose.

Michael J. Boyle, a Professor of Political Science at LaSalle University and, remarkably, himself a counter-terrorism advisor to Obama, has written extensively and critically on drone warfare. Most notably, in a 2014 article, he claimed that the Obama administration strategically employed vague language, in conjunction with a lack of transparency, about people being 'linked' to an extremist group (while stopping short of explaining what that link supposedly was).³¹² As a result, Boyle concluded that the lethal drone programme had 'become an anomaly: an unaccountable and non-transparent form of democratic warfare.'³¹³ Strategically speaking, the CIA benefitted from this ambiguity. It provided the agency with a higher degree of operational freedom from which it could continue infringing upon the tenets of international law and the principles of just war, without consequence or penalty.

³¹⁰ Harry van der Linden, 'Drone Warfare and Just War Theory,' p. 173.

³¹¹ Rebecca Sanders, *The Fate of Human Rights in the Global War on Terror*, (Oxford: Oxford University Press, 2018), p. 3; see also Edward A. Guelfi, Buddhika Jayamaha, and Travis Robison, 'The Imperative for the US Military to Develop a Counter-UAS Strategy,' US Air Force Academy, 2020.

³¹² Michael J. Boyle, 'Is the US Drone War Effective?' *Current History*, Vol.113, No.762, (2014); see also Jake Berlin, 'Unpopular but Effective? The Drone Strike Dilemma.' *Sigma: Journal of Political and International Studies* Vol.33, No.1 (2016), p. 11.

³¹³ Michael J. Boyle, 'The Legal and Ethical Implications of Drone Warfare,' *The International Journal of Human Rights*, Vol.19, No.2 (2015), p. 119; see also Alaa Hijazi, et al., 'Psychological Dimensions of Drone Warfare,' *Current Psychology* Vol.38, No.5 (2019), pp. 1285-1296.

Richard A. Clarke, former counter-terrorism advisor to Bill Clinton and George W. Bush, and policy-maker by profession echoed Boyle's observations. Clarke admitted in his 2015 book, *Sting of the Drone*, that the 'programme got out of hand,' adding that 'the excessive secrecy is as counterproductive as some of the strikes are.'³¹⁴ The American government altered the definitional parameters of 'civilian' and 'combatant' to suppress the high numbers of civilian casualties artificially. Such changes suggest a dangerous precedent. Even a child killed during a drone strike while playing on the beach could be designated by a government as a 'terrorist planting bombs' to justify and exculpate their actions.³¹⁵ In a later interview with *Democracy Now*, Clarke questioned whether 'it is a fair and good policy to get them before they get us?'³¹⁶

To address the developing debate, the US government commissioned a task force to evaluate the lethal drone programs, resulting in the 2014 Stimson Report. It concluded that without proper transparency regarding outcomes and procedures used in drone strikes, the targeted killing programme risked undermining US security.³¹⁷ Major General Charles J. Dunlap Jr., however, disagreed with these calls for greater transparency. As a retired Deputy Judge Advocate General of the USAF and current Executive Director of Duke Law School's Center on Law, Ethics and National Security, Dunlap Jr.'s position is chiefly aligned to that offered by the military. In a later article, 'Why Can't the Media be More Transparent About Drones?' Dunlap Jr. argued that the call for more transparency in drone operations was both histrionic and somewhat naïve. In

³¹⁴ Richard A. Clarke, *Sting of the Drone* (New York: St. Martin's Press, 2015); see also Thomas Gregory, 'Drones and the Ethics of War,' *The Routledge Handbook to Rethinking Ethics in International Relations* (2020), p. 115.

³¹⁵ In 2014, an Israeli drone killed 4 children playing on a Gaza beach. The Israeli government exonerated itself by claiming that the children were 'terrorists planting bombs.' Despite zero evidence to back up their claim, the deaths of these 4 boys, ranging in ages from nine to eleven, were just another example of how drone strikes have led to outrage and suspicion regarding their use by governments around the world. In combat, if war crimes were committed, those individuals who directly took part in the atrocity are (in most cases) found and punished. However, in drone strikes, the distance between operator and target allows for greater desensitization and a lack of accountability.

³¹⁶ Richard A. Clarke, *Interview with Democracy Now*, June 2014. Transcript: https://www.democracynow.org/2014/6/2/ex_counterterrorism_czar_richard_clarke_bush

³¹⁷ Stimson Task Force, *The Stimson Report*, 2014. Available online at: www.stimson.org/books-reports/recommendations-and-report-of-the-stimson-task-force-on-us-drone-policy/, accessed 13 February 2019.

Dunlap Jr.'s view, greater transparency would put American lives at risk and jeopardize missions currently in operation. He maintained that the US was already too transparent and doubted 'the wisdom of this sort of "transparency" as it reveals to adversaries exactly how they need to prepare for and counteract an attack.'³¹⁸

In 2014, Ben Emmerson, a British lawyer specializing in European Human Rights Law, Public International Law and International Criminal Law, published a report during his time as Special Rapporteur on Terrorism for the United Nations. This 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism' was written in response to the practice of asymmetrical warfare and the entrenched practice of secrecy in the US drone program. Emmerson posited that the lack of transparency in drone strikes makes it difficult to objectively evaluate precision claims when civilian casualty numbers are not made public. He argued that there is an urgent need to ensure that restraints are placed on these lethal weapons. Without a reasonable level of oversight and transparency, no government can claim legitimacy in its actions nor be held accountable for potential violations.³¹⁹

Yet former CIA director Leon Panetta, a relative newcomer to the field of intelligence and often thought of a moderate in the realm of national security, has nevertheless consistently (and somewhat surprisingly) argued in favour of lethal drone usage—even referring to them as 'the only game in town.'³²⁰ The use of airstrikes, according to Panetta, is 'much worse,' insinuating that the use of lethal drones is more accurate, practical and justifiable in comparison.³²¹ But how

³¹⁸ Charles J. Dunlap Jr., 'A Report Card on the Stimson Report Card,' *The Lawfare Institute* (2016).

³¹⁹ Ben Emmerson, 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,' *Human Rights Council*, Twenty-fifth Session, Agenda Item 3, 10 March 2014, pp. 11-18.

³²⁰ Gareth Porter, 'CIA Drone Operators Oppose Strikes as Helping al Qaeda,' *Inter Press News Service Agency*, 03 June 2010; see also Michelle Bentley, 'Fetishized Data: Counterterrorism, Drone Warfare and Pilot Testimony,' *Critical Studies on Terrorism* Vol.11, No.1 (2018), pp. 88-110.

³²¹ Shima D. Keene, 'Lethal and Legal? The Ethics of Drone Strikes,' *Strategic Studies Institute and the US Army War College Press*, 2015, p. 17; see also Christopher Coker, 'Ethics, Drones, and Killer Robots,' *The Oxford Handbook of International Political Theory* (2018), p. 247.

can one claim the relative strategic effectiveness of lethal drones when the programme itself is not sufficiently transparent to construe fundamental adherence to the rule of law?

The 2014 Stimson report, which called for greater transparency, also advocated for the removal of lethal military drones from CIA control. The authors argued that military officials should wield these military weapons—not intelligence agencies who have a proclivity for covering up contentious strategies.³²² When considering the law of armed conflict (LoAC), both military and law enforcement agencies' use of drones becomes a conflicting and dangerous practice.³²³ Peculiarly, it signals to the international community that the US authorizes two parallel drone programs: one led by the Department of Justice, which has a certain degree of accountability assigned to it, and the other operated by the CIA, which is not bound to any meaningful degree of oversight or transparency. In other words, it implies (even if falsely so) that the US is running a 'dirty war' behind the scenes with the use of the CIA-run drone program.

It is undeniable that the CIA plays an important, and equally controversial, role in the US drone program. Nevertheless, having the American drone programme within CIA control poses a problem for both transparency and accountability. Why is an intelligence-gathering agency running the show? By definition, they operate covert activities either above or beyond the purview of the law. The military does not have such a luxury, so it would have been the most logical choice if the government wanted a drone programme that was more accountable and transparent.³²⁴ States, for the most part, make intentional choices. So, it can be inferred that the US government purposely chose the CIA for precisely the reasons criticized in this section—it wanted an agency with

³²² Stimson Task Force, *The Stimson Report*, 2014. Available online at: www.stimson.org/books-reports/recommendations-and-report-of-the-stimson-task-force-on-us-drone-policy/, Accessed 13 February 2019.

³²³ Department of Defence, *DoD Law of War Program*, 09 December 1998. [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/9924f86903185d2bc12570d900330b54/\\$FILE/DoD%20Law%20of%20War%20Program%20.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/9924f86903185d2bc12570d900330b54/$FILE/DoD%20Law%20of%20War%20Program%20.pdf)

³²⁴ Ahmad Nazir Warraich, 'The Use of Drones: Legal Grey Area?' *Islamabad Institute of Strategic Studies*, 2012, p. 65; see also Andreas Behnke, 'Drone Warfare and the Emergence of Spaces of Exception,' *Law, Security and the State of Perpetual Emergency* (Palgrave Macmillan, 2020), pp. 37-65.

experience in covert ops to conduct drone strikes and effectively coverup any unintended consequences.

Since the international legal system is quite unable to explicitly address or constrain the use of military drones in armed conflict, this matter was expected to be dealt with at a domestic (state) level—yet having CIA control over the programme runs the apparent risk of reducing this last line of legal oversight. This raises an additional question of drone strikes by other countries at the US request or using US target dossiers/intelligence. Perhaps unsurprisingly, this has already occurred on several occasions. One such example of co-operation between the US and Israel will be examined in detail in the next chapter.

In his 2016 book *The Assassination Complex*, Jeremy Scahill, a leading American journalist and editor of *The Intercept*, revealed details³²⁵ about the secretive CIA-led drone program. He contended that ‘drones are a tool, not a policy,’ so how they are used should be made public. Scahill observed that while a discussion on the use of technological weaponry in remote killing operations is a worthwhile endeavour, the goal should be to examine how states have obtained the power to determine who lives and dies.³²⁶ In other words, there are broader philosophical questions at stake here.

The irony, Scahill notes, is that President Obama’s administration campaigned on ending the unethical treatment of detainees at Guantanamo Bay, and later established a targeted killing campaign that was similarly controversial.³²⁷ These issues stem from a general lack of transparency in the CIA-led drone program, preventing oversight committees from regulating and restraining these lethal military programs. Does this shift reflect the historical legacies of

³²⁵ With the aid of leaked documents provided by anonymous US government sources; see Jeremy Scahill, *The Assassination Complex* (New York: Simon and Schuster, 2016); see also Thomas Waldman, ‘Vicarious Warfare: The Counterproductive Consequences of Modern American Military Practice,’ *Contemporary Security Policy* Vol.39, No.2 (2018), pp. 181-205.

³²⁶ Scahill, *The Assassination Complex*, pp. 2-3; for historical context see Katherine Chandler, *Unmanning: How Humans, Machines and Media Perform Drone Warfare* (New York: Rutgers University Press, 2020).

³²⁷ Scahill, *The Assassination Complex*, p. 110; see also Leonard Cutler, *President Obama’s Counterterrorism Strategy in the War on Terror: An Assessment* (Berlin: Springer, 2017).

somewhat antiquated sets of international regulatory frameworks that mean, perhaps somewhat accidentally, that targeted killing and assassination are less closely regulated than interrogations, incarceration and torture? Have the well-intentioned campaigns of human-right lawyers against facilities like Guantanamo resulted in more deaths? Moreover, what are the strategies and practices of the CIA-led drone programme? The purpose of this next section will be to ascertain how questionable ‘self-defence’ practices within the CIA-led drone programme have challenged the legitimacy of the US ‘global war on terror.’

Targeted Killing, Assassination and Extrajudicial Execution

Christian Enemark, a Professor of International Relations at the University of Southampton, has argued that ‘the nature of war is immutable: war, to be war, must be a contest.’³²⁸ Yet targeted killing removes this ‘contest’ from war—and creates a unidirectional form of combat or aggression. In 2013, Enemark went further and examined the threat of ‘risk-free killing’ and how the absence of mutual risk between combatants changes the understanding of war.³²⁹ The issue boiled down to the understanding of war as a lethal contest within which ‘combatants on one side use force in a relationship of mutual risk with those on the other side.’ This mutual risk relationship is derived from a ‘bargain’ among warriors... that the moral license to kill may be exercised only by someone who is in return prepared to die’.³³⁰

³²⁸ Christian Enemark, ‘Drones, Risk and Perpetual Force,’ *Ethics and International Affairs*, Vol.28, No.3 (2014), p. 366; see also Peter Lee, ‘Armed Drones: Automation, Autonomy, and Ethical Decision-Making,’ *The Political Economy of Robots* (Palgrave Macmillan, 2018), pp. 291-315.

³²⁹ See also Marcus Schulzke, ‘Rethinking Military Virtue Ethics in an Age of Unmanned Weapons,’ *Journal of Military Ethics* Vol.15, No.3 (2016), pp. 187-204; and Aaron Duggan, ‘Nex Ex Machina, Or Bringing It All Back Home: The Fallacy and Fantasy of Sacrificeless Warfare and Why It Will Never Work,’ *Mythological Studies Journal* Vol.1, No.1 (2010); and Valerie Morkevicius, ‘Tin Men: Ethics, Cybernetics and the Importance of Soul,’ *Journal of Military Ethics* Vol.13, No.1 (2014), pp. 3-19.

³³⁰ Christian Enemark, *Armed Drones and the Ethics of War* (London: Routledge, 2013), pp. 96; see also Jesse Kirkpatrick, ‘Drones and the Martial Virtue Courage,’ *Journal of Military Ethics* Vol.14, No.3-4 (2015), pp. 202-219; and Robert Sparrow, ‘Drones, Courage, and Military Culture,’ *Routledge Handbook of Military Ethics* (2015), pp. 380-394.

Enemark recognized that when one engages in targeted killing by drone, this ancient contest and mutual risk relationship disappears. As such, Enemark maintained that bi-lateral risk is an ‘indispensable characteristic of war, and courage is an indispensable characteristic of a warrior.’ The practice of targeted killing is problematic because the drone pilot can kill ‘without experiencing any physical risk, thus requiring none of the courage that for millennia has distinguished the warrior from all other kinds of killer.’³³¹ Conversely, fixed-wing conventional aircraft do not suffer from this moral quandary, as the pilot is at risk of being targeted during the flight's entire duration. Pilots can be shot down with surface to air missiles or other defensive means which cannot, and do not, threaten remote drone operators. Thus, in ethical terms, physical risk differentiates a hero or warrior from a killer.

This issue becomes especially critical when considering the state justification for pre-attack self-defence. For how can a state legitimately claim self-defence when the weapon it chooses to address a perceived (anticipated) threat is not only remote but poses a risk only to those targeted? Should self-defence not demonstrate that the ‘victim’ state is in some way vulnerable? In later chapters, this dissertation will examine whether the legitimacy of a state’s claim to preemptive self-defence may be impacted by its choice to employ lethal drones. This section will proceed to examine the practice of targeted killing.

According to existing scholarly understandings, a targeted killing can be defined as the premeditated remote use of lethal force against an individual.³³² According to international law, this practice can only be justified as a response to an imminent threat. More specifically, Article 51 of the UN Charter allows for the targeted killing of terrorists if they pose an imminent threat,³³³

³³¹ Ibid, p. 97; see also Joseba Zulaika, *Hellfire from Paradise Ranch: On the Front Lines of Drone Warfare* (Berkeley: University of California Press, 2020); and Peter Olsthoorn, ‘Courage in the Military: Physical and Moral,’ *Journal of Military Ethics* Vol.6, No.4 (2007), pp. 270-279.

³³² Philip Alston, ‘Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,’ *United Nations General Assembly*, Fourteenth Session, 28 May 2010, p. 3; see also Mary Ellen O’Connell, ‘Why Obama’s Targeted Killing is Worse than Bush’s Torture,’ *The Guardian*, 20 January 2012; see also Jack McDonald, *Ethics, Law and Justifying Targeted Killings: The Obama Administration at War* (London: Routledge, 2016).

³³³ Claire Finkelstein et. al., *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford: Oxford University Press 2012), pp. 256-259; see also Robert Sparrow, ‘War Without Virtue?’ in *Killing by Remote Control: The Ethics of an Unmanned Military* (2013), pp. 84-105.

therefore ensuring that this combat method's employment adheres to the principle of 'self-defence.'³³⁴

David Cole, former Georgetown University Law Professor and current National Legal Director of the American Civil Liberties Union (ACLU), has argued that the United States has used this legal doctrine to expand the definitional parameters of imminence to a point where it is no longer capable of restricting any relevant action. Additionally, inadequate and ambiguous international laws on the subject have only made targeted killing easier. At this point, the US does not even need to demonstrate that an attack will occur in the immediate future. Instead, it coins what it euphemistically calls a 'broader concept of imminence.'³³⁵ In the absence of an international law explicitly prohibiting the use of targeted killing strategies combat, legal loopholes were found, enabling its continued use. Presently, no amendments or legal adjustments have been made to limit or regulate the use of such practices. Critics have pointed to the inhumane ways in which drones stalk their targets like a predator stalks its prey—waiting patiently to strike without warning, virtually eliminating the targets' right to surrender.³³⁶

It is easy to see the parallels that some critics have drawn between targeted killing and contract killing. Consequently, this unidirectional form of combat is somewhat indistinguishable from civilian homicide since targets are eliminated without trial or any possibility for them to defend themselves legally or physically.³³⁷ Self-evidently, this factor furthermore violates the *jus in bello* principle of humanity. Former US President Jimmy Carter has even suggested that the US will have difficulty claiming moral authority since the American government emphasizes killing

³³⁴ Article 51, 'Chapter VII — Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression,' *United Nations Charter*. <<https://www.un.org/en/sections/un-charter/chapter-vii/>>.

³³⁵ David Cole, 'How We Made Killing Easy,' *New York Review of Books*, 06 February 2013; see also Luca Trenta, 'The Obama Administration's Conceptual Change: Imminence and the Legitimation of Targeted Killings,' *European Journal of International Security* Vol.3, No.1 (2018), pp. 69-93.

³³⁶ Laurie Calhoun, 'Targeted Killing and Drone Warfare,' Ch.18 from *The Routledge Handbook of Critical Terrorism Studies* (London: Routledge, 2016), pp. 412-413; see also James Igoe Walsh, 'The Rise of Targeted Killing,' *Journal of Strategic Studies* Vol.41, Nos.1-2 (2018), pp. 143-159.

³³⁷ Joshua Olson and Muhammad Rashid, 'Modern Drone Warfare: An Ethical Analysis,' *ASEE Southeast Section Conference*, (2013), p. 3.

targets over capturing them.³³⁸ In response, John O. Brennan argued that targeted strikes were against specific terrorists—defending the strikes as legal while emphasizing their ‘preciseness.’³³⁹ Unfortunately, this cannot be proven due to a lack of transparency in the program, preventing statistics from being impartially examined. And so, the claims of legal adherence lose their credibility in the absence of such information.

Moreover, the ACLU determined that the targeted killing programme sets a dangerous precedent as the US treats international laws as recommendations rather than mandatory legal restrictions.³⁴⁰ This continued practise of targeted killing has contributed to an increase of civilian casualties—a fact not even the US government could deny. Former White House Press Secretary Jay Carney even admitted that ‘US strikes have resulted in civilian casualties’ but defended this by noting that accidental civilian casualties are ‘a risk that exists in all wars.’³⁴¹ Yet, as Laurie Calhoun observes, politicians and the general public remain unaware of such tactics’ adverse long-term effects.³⁴² Critics argue (with data in hand) that targeted killing is usually not as selective or precise as the American government would have us believe, and when it does meet this standard of precision—it is similar to the assassination. Furthermore, this practice infringes upon US Executive Order 12333, subsection 2.11, which states that ‘no person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.’³⁴³

Despite these domestic protocols and legal constraints, the US drone programme not only continues to engage in targeted killing missions but has even changed its rules of engagement to allow for higher numbers of civilian deaths per strike. According to Tom Vanden Brook, an

³³⁸ Bradley J. Strawser and Rory Carroll, ‘The Philosopher Making the Moral Case for US Drones,’ *The Guardian*, 02 August 2012.

³³⁹ John O. Brennan, *The Ethics and Efficacy of the President’s Counter-terrorism Strategy*, The Wilson Center, 30 April 2012; see also Tom De Groot and Salvador Santino Regilme Jr., ‘Drone Warfare and the Obama Administration’s Path-Dependent Struggles on Human Rights and Counterterrorism,’ *Interdisciplinary Political Studies* Vol.6, No.1 (2020), pp. 167-201.

³⁴⁰ Common Dreams Staff, ‘Admission of US Drone Strikes Does Nothing to Justify Program’s Legality,’ ACLU, *Common Dreams*, 01 May 2012.

³⁴¹ Mark Schone, ‘White House Admits Killing Civilians with Drone Strikes, Denies Breaking Law,’ *NBC News*, 22 October 2013.

³⁴² Calhoun, ‘Targeted Killing and Drone Warfare,’ p. 415.

³⁴³ US National Archives, ‘The Provisions of Executive Order 12333,’ 46 FR 59941, 3 CFR, 1981 Comp., *US National Archives*, 04 December 1981, p. 200.

investigative journalist who has extensively researched the US drone program, the US went from opposing drone strikes, which might result in civilian casualties, to establishing targeting areas and permitting up to ten civilian casualties per strike.³⁴⁴ Donald Rumsfeld approved one hundred percent of over fifty proposed drone strikes in which the estimated high civilian casualty rates exceeded thirty (non-combatant) civilian lives.³⁴⁵ These findings contradict US officials who claim that drone strikes with an estimated high risk for civilian casualties were only approved in ‘extraordinary circumstances.’³⁴⁶ By this logic, the American military’s understanding of ‘extraordinary circumstance’ includes every strike request. These recently released findings not only contradict the narrative offered by the Executive branch but also begs the question of whether the American government is withholding further controversial information about its lethal drone missions. As with all counter-terrorism programs, one wonders what the long-term response of terrorists might be.

The high level of civilian casualties caused by targeted killing violates international laws by being indiscriminate and superfluous. International law requires that states must assume an individual is a civilian and not a combatant if in doubt.³⁴⁷ Unfortunately, this has not been the *modus operandi* of the targeted killing programme wherein civilians can be killed if they are intended targets or if they happen to be near an intended target—because the threshold of acceptable civilian casualties is seemingly expanding with no end in sight.

Even with significant changes, the US drone programme will not become legally compliant overnight. Indeed, without significant international legal constraints, this programme might well

³⁴⁴ Tom Vanden Brook, ‘New Rules Allow for More Civilian Casualties in Air War Against ISIS,’ *Military Times*, 19 April 2016; see also Chris Woods, ‘Covert Drone Strikes and the Fiction of Zero Civilian Casualties,’ *Precision Strike Warfare and International Intervention: Strategic, Ethico-Legal and Decisional Implications* (2014), pp. 95-113; see also Joshua Andresen, ‘Putting Lethal Force on the Table: How Drones Change the Alternative Space of War and Counterterrorism,’ *Harvard National Security Journal* Vol.8, No.1 (2017), p. 426.

³⁴⁵ Michael R. Gordon, ‘After the War: Preliminaries; US Air Raids in ’02 Prepared for War in Iraq,’ *New York Times*, 30 July 2003.

³⁴⁶ Micah Zenko, ‘Leon Panetta Reflects on US Drone Strikes,’ *Council on Foreign Relations*, 04 February 2013; see also Micah Zenko, ‘Donald Trump is Pushing America’s Special Forces Past the Breaking Point,’ *Foreign Policy* 1 (2017).

³⁴⁷ Protocol Additional to the Geneva Conventions of 12 August 1949.

become more illegal overtime. US President Donald Trump even revoked Obama's 2016 Executive Order requiring intelligence officials to publish civilian casualty statistics from drone strikes.³⁴⁸ Instead of moving towards a more transparent and accountable US counter-terror program, it seems as though there may be backsliding. The Trump administration largely reversed Obama's attempt at limited transparency in CIA operations. Having such a vicarious practice be so carelessly regulated and addressed at both the international and national levels points to the urgent need for a legal amendment to protect civilians and restore legitimacy to such operations. Still, targeted killing is not the most disputatious practice employed in the US drone program.

We now need to turn to the issue of 'signature strikes.' Signature strikes are similar to targeted strikes but significantly more problematic. Under the Bush administration, remote targeting policy was restricted only to individuals who could be proven to be a high-value target (HVT).³⁴⁹ However, under the Obama administration, targets were profiled based on observable behavioural patterns.³⁵⁰ The policy of strategic strikes developed under the Obama administration, wherein an individual could be deemed a target if they exhibited behavioural traits 'common' amongst extremist individuals.³⁵¹ According to the practice of signature strikes, if an individual 'looks' or 'acts' like a terrorist (from a distance of roughly 3000ft), they can be justifiably killed by a drone strike. Tragically and somewhat predictably, signature strikes have resulted in the

³⁴⁸ BBC, 'Trump Revokes Obama Rule on Reporting Drone Strike Deaths,' *BBC News US & Canada*, 07 March 2019; see also Rebecca Malone, 'Trump's First Year: Analyzing the Trump Administration's Use of Drone Strikes as a Counterterrorism Strategy in 2017,' *Georgetown Security Studies Review* Vol.6, No.2 (2018), pp. 6-18.

³⁴⁹ Andre Barrinha and Luis Da Vinha, 'Dealing with Risk: Precision Strikes and Interventionism in the Obama Administration,' in Mike Aaronson et. al. (ed) *Precision Strike Warfare and International Intervention: Strategic, Ethno-Legal and Decisional Implications*, (London: Routledge, 2014), p. 24.

³⁵⁰ James Cavallaro, Stephan Sonnenberg, and Sarah Knuckey, 'Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan,' *Stanford International Human Rights and Conflict Resolution Clinic and Global Justice Clinic* (Stanford: NYU School of Law, 2012).

³⁵¹ Greg Miller, 'White House Approves Broader Yemen Drone Campaign,' *The Washington Post*, 25 April 2012; see also Henry A. Giroux, *The Public in Peril: Trump and the Menace of American Authoritarianism* (Routledge, 2017).

misidentification of civilian events like funerals, parties and weddings as ‘terrorist gatherings,’ resulting in the slaughter of many innocent people.³⁵²

At first, Obama rejected the use of signature strikes, but he came around to the idea in April 2012 when he authorized their usage in counter-terrorism operations.³⁵³ According to journalists like Jo Becker and Scott Shane, under the Obama administration, ‘more than 100 members of [the] governments sprawling national security apparatus gather[ed] by secure video teleconference to pour over terrorism suspects’ biographies and recommend... who should be next to die’.³⁵⁴ Under international law, signature strikes are illegal as they cannot distinguish between lawful targets and civilians.³⁵⁵ However, the United States is not wholly to blame.

The CIA-led drone program's main goal was to target and neutralize domestic and international security threats. With the increase of terror attacks worldwide, the drone program was expanded to address this pertinent threat. The underlying problem lies with the lack of international constraints surrounding such policies. It is unrealistic to expect a state to objectively determine what practices are immoral in counter-terrorism operations when it believes these operations' sole purpose is to prevent and thwart terror attacks from occurring.

According to the reasoning offered by the CIA, there really should not be any legal constraints/oversight on these operations—because they are going after the ‘enemy.’ Why should the CIA adhere to international laws when terrorists do not? Apart from strategic counter-

³⁵² T. Engelhardt, ‘Tomgram: Engelhardt, Washington’s Wedding Album from Hell,’ tomdispatch.com, 20 December 2013; see also Susan D. LeVine and Joseph A. Rutigliano Jr., ‘US Military Use of Non-Lethal Weapons: Reality vs. Perceptions,’ *Case Western Reserve Journal of International Law* Vol.47 (2015), p. 239.

³⁵³ Miller, ‘White House Approves Broader Yemen Drone Campaign,’

³⁵⁴ Jo Becker and Scott Shane, ‘Secret ‘Kill List’ Proves a Test of Obama’s Principles and Will,’ *New York Times*, 29 May 2012; see also Douglas Cox and Ramzi Kassem, ‘Off the Record: The National Security Council, Drone Killings, and Historical Accountability,’ *Yale Journal on Regulation* Vol.31 (2014), p. 363; and P. J. Novack, ‘Due Process and Surviving America's Kill List: How the Courts and Congress Can End the Executive Branch's Encroachment on Civil Liberties in the War on Terror,’ *Journal of Law, Policy and Military Affairs* 1 (2019), p. 125.

³⁵⁵ Kerstin Fisk et. al., *Preventative Force: Drones, Targeted Killing and the Transformation of Contemporary Warfare*, (New York: NYU Press, 2016), p.121; see also Jameel Jaffer, *The Drone Memos: Targeted Killing, Secrecy and the Law* (New York: New Press, 2010).

productivity issues regarding these targeting policies, this approach indicates a more significant problem that has long been debated by public intellectuals. The US must adhere to international laws because it is the only thing that distinguishes them from the terrorists. If the US decided to continue ignoring and infringing upon existing international laws, it could be viewed as ‘no better’ than the terrorists themselves. It is the law, and the respect for such, which distinguishes between sides and lends ‘asymmetric warfare’ much of its asymmetry.

The high number of civilian casualties resulting from targeted killing and signature strikes is sufficient to demonstrate a violation of international customary law. However, the US drone program's increasingly common tactic, called ‘double-tapping,’³⁵⁶ proves just how indiscriminate the US drone programme is.³⁵⁷ A ‘double-tap’ can be explained as a drone strike that bombs a target, waits a period of twenty or so minutes until first responders arrive, then proceeds to bomb a second or even third time.³⁵⁸ The tactic of ‘double-tapping’ was initially used in Iraq and Afghanistan by US ground troops who wanted to ensure that targeted individuals were dead—so they would ‘double-tap’ them (reshoot them) when they were down to make sure they were not feigning death.³⁵⁹ This tactic was then adopted into remote targeting policies. It can now be understood to refer to a drone attack that targets individuals who have rushed in to rescue or treat drone strikes victims.³⁶⁰ A recently leaked video show US pilots engaging in this barbaric practice—even double-tapping medical personnel, journalists and children.³⁶¹ Under international law, these ‘targets’ are non-combatants, yet drones routinely and indiscriminately murder them.

³⁵⁶ See leaked classified videos of double-tapping: <https://collateralmurder.wikileaks.org/>

³⁵⁷ Chris Woods, *Get the Data: The Return of Double-Tap Drone Strikes*, The Bureau of Investigative Journalism, 01 August 2013.

³⁵⁸ Samuel Alexander, ‘Double-Tap Warfare: Should President Obama Be Investigated for War Crimes?’ Vol.69 *Florida Law Review* 261 (2017).

³⁵⁹ Gary D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, (Cambridge: Cambridge University Press, 2010) pp. 327-330.

³⁶⁰ Sikander Ahmed Shah, *International Law and Drone Strikes in Pakistan: The Legal and Socio-Political Aspects*, (London: Routledge, 2014) p. 175; see also T. McKelvey, ‘Drones Kill Rescuers in ‘Double-Tap,’ Say Activists, *BBC News*, 22 October 2013; and Avery Plaw, Matthew S. Fricker, and Brian Glyn Williams, ‘Practice Makes Perfect? The Changing Civilian Toll of CIA Drone Strikes in Pakistan,’ *Perspectives on Terrorism* 5.5/6 (2011), pp. 51-69.

³⁶¹ McKelvey, ‘Drones Kill Rescuers in ‘Double Tap,’; see also Jerome Taylor, ‘Outrage at CIA’s Deadly Double Tap Drone Attacks,’ *Independent News*, 25 September 2012; see also Chris McGreal, ‘WikiLeaks Reveal Video Showing US Air Crew Shooting Down Iraqi Civilians,’ *The Guardian*, 05 April 2010.

International humanitarian law should afford protection to civilians, journalists and medical personnel. Despite this legal protection, the practice of double-tapping is still very much the norm in counter-terrorism operations. There can be zero justification for this practice. For no strategic cost should ever be worth deliberately taking innocent lives.

Etymologically, this practice is probably borrowed from the terrorist method of planting ‘secondary’ bombs for the same purpose. However, by being an official state actor, the United States should engage in practices that are somewhat more evolved (morally and ethically) than those it seeks to label as terrorists. Targeting first responders post-attack is immoral as it is illegal—regardless of who is directing this plan. Even if inadvertently, killing innocents remains a morally indefensible consequence of the US drone programme’s practice of targeted killing and signature strikes. However, this was easily argued away by noting that it was an unintentional consequence occurring in a fog of war. New reports now indicate that there have been instances in which the US purposefully and deliberately targeted civilians and medical personnel.³⁶² These findings cannot be so easily brushed aside, as the targeting of non-combatants is a clear violation of international law. Some legal scholars have noted that this deliberate killing of civilians and medical personnel is tantamount to a war crime under the US War Crimes Act of 1996 and a violation of Article 3 of the Geneva Conventions of 1949.³⁶³ Additionally, it infringes upon Articles 10,³⁶⁴ 12,³⁶⁵ and 13³⁶⁶ of Additional Protocol I to the Geneva Conventions and the principles of distinction, humanity and proportionality.³⁶⁷

³⁶² Glenn Greenwald, ‘US Drone Strikes Target Rescuers in Pakistan—and the West Stays Silent,’ *The Guardian*, 20 August 2012; see also Brian Glyn Williams, ‘New light on CIA Double Tap Drone Strikes on Taliban First Responders in Pakistan’s Tribal Areas,’ *Perspectives on Terrorism* 7.3 (2013), pp. 79-83.

³⁶³ Alexander, ‘Double-Tap Warfare: Should President Obama Be Investigated for War Crimes?’

³⁶⁴ Article 10 of Additional Protocol I: ‘All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.’

³⁶⁵ Article 12 of Additional Protocol I: ‘Medical units shall be respected and protected at all times and shall not be the object of attack.’

³⁶⁶ Article 13 of Additional Protocol I: ‘The protection to which civilian medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.’

³⁶⁷ See for more information: Sikander Ahmed Shah, *International Law and Drone Strikes in Pakistan: The Legal and Socio-Political Aspects* (London: Routledge, 2014), p. 175; see also McKelvey, ‘Drones Kill Rescuers in Double-Tap,’

The engagement in ‘double-tapping’ could be, by these standards, considered a war crime.³⁶⁸ However, it is unlikely that the United States will ever be prosecuted for these due to a lack of evidence and a secrecy culture within the CIA-led program. Some have even speculated that this practice is used to ‘cover-up’ atrocities by drone strike—killing those first on the scene who might be able to report on what has happened while deterring others from following.³⁶⁹ Yet, this practice, like targeted killing and signature strikes before it, still endures. It is undoubtedly aided by the lack of transparency and oversight in the CIA-led drone program.

Combat Drones: Legality v. State Practice

Notably, two prominent British lawyers, Paul Shiner and Dan Carey, published a joint paper in 2013 examining *The Legality of the UK’s Use of Armed Unmanned Aerial Vehicles*. Although not explicitly studying the American drone war, their paper provided an illuminating examination into the international laws of armed conflict and identified four principal elements that require unwavering adherence if a war is to be considered ‘just’ and ‘legal.’ These principles are necessity, humanity, distinction, and proportionality.³⁷⁰ Based upon the original *jus in bello* concepts, these principles are all but immutable and pertinent, not only to the British use of military drones but also to the American drone program. Under the principle of necessity, the lawyers argue that greater transparency is required to determine each drone strike's legitimacy—since this principle is not based on generalities. The second principle of humanity requires that drone programs allow the combatant to surrender, or, if the possibility exists, disable or arrest the combatant.³⁷¹

³⁶⁸ Ben Emmerson, Special UN Rapporteur, has even argued that ‘involving a second missile attack on a target, could be described as war crimes because they had been reported in some instances as having killed mourners at funerals for people killed in the initial strike, or tribal elders meeting at the target sites,’ see also J. F. Burns, ‘UN Panel to Investigate Rise in Drone Strikes,’ *New York Times*, 24 January 2013.

³⁶⁹ Deliberate targeting of journalists and medical personnel by US forces: <https://collateralmurder.wikileaks.org/>

³⁷⁰ Phil Shiner and Dan Carey, ‘The Legality of the UK’s Use of Armed Unmanned Aerial Vehicles (Drones),’ *Public Interest Law Journal*, 03 June 2013.

³⁷¹ *Ibid*, pp. 17-18.

Distinction, which factors in as the third principle, requires that drones accurately discriminate between civilians and terrorists. However, Shiner and Carey argue that the principle of distinction should be held to a higher standard, especially with weapons that claim discernment. Moreover, the identity of potential targets is also an important consideration to make. Are they civilians taking part in hostilities or genuine armed combatants? As the lawyers conclude, the problem is that an assessment of a combatant is unlikely to change post-strike. If an individual were deemed a combatant pre-strike, no amount of evidence during or after the strike would change this assessment.³⁷² This issue regarding the ‘combatant’ identity will be discussed later for reasons of conceptual clarity.

The last principle, namely proportionality, requires that military action be proportionate to said actions of the anticipated outcome. For instance, a lethal drone strike (one which has the potential of slaughtering an entire village) could not be deemed proportional since the loss of innocents outweighs any potential strategic value of such an action. Again, this is why more transparency is necessary for drone programmes together with greater adherence to international legal parameters. Shiner and Carey’s paper reveals where and how lethal drone programs (regardless of whether American or British agencies run them) fail to adhere to international law principles. The four principles they identified therein provide a clear rubric from which to determine not only how the current drone programme is failing but what principles need greater adherence for the use of such weapons to be considered just and legal. Unfortunately, missing from their paper was a detailed examination of the American drone programme more precisely.

Fortunately, Hugh Gusterson, a Professor of Anthropology and International Affairs at George Washington University, offers this missing element. Utilizing geographical analysis, Gusterson postulated that drones had redefined the battlefield's space due to the paradox of closeness and distance. He claimed that it would not be international law that ultimately stops the US drone program, but rather the realization that this strategy threatens its democratic values by

³⁷² Shiner and Carey, ‘The Legality of the UK’s Use of Armed Unmanned Aerial Vehicles (Drones),’ pp. 24, 28 and 31; see also T. J. Coles, *Britain’s Secret Wars: How and Why the United Kingdom Sponsors Conflict Around the World* (London: Clairview Books, 2018); and Peter Lee, *Reaper Force-Inside Britain's Drone Wars* (London: Kings Road Publishing, 2018).

creating a state of ‘permanent war.’³⁷³ Lethal drone usage, according to Gusterson, violates *jus ad bellum* principles wherein a war, to be considered just, must have future peace as its goal and a reasonable chance of success.

Ian G. R. Shaw, a professor based at Glasgow University, seemingly builds upon Gusterson’s earlier observations that drones redefine the battlespace. In his 2016 book, Shaw noted that drones are a product of our historical fascination with human surveillance and warfare that has created innovative tools to further these obsessions.³⁷⁴ These spaces allow for new forms of conflict to emerge—facilitated in part by new technological weaponry. Shaw reasoned that drones are the new ‘soldiers’ in war—and the honour, courage, sacrifice, and heroism are transferred from man to machine. But, he argues, sparing soldiers should not come as a trade-off to endanger civilian lives.³⁷⁵

Marcus Schulzke, a Professor of International Relations at the University of York, noted that placing mandatory restrictions and regulations on drone usage could mitigate the destructiveness of war, protect civilian lives and ensure adherence to international laws.³⁷⁶ In this sense, legal constraints can be understood as a conceptual tool capable of resurrecting morality in the lethal drone program.³⁷⁷ Yet in 2012, John O. Brennan, former Director of the CIA during the Obama administration, gave a speech on ‘The Ethics and Efficacy of the President’s Counter-terrorism Strategy.’ In it, he strongly argued that the US drone programme had indeed abided by international law. *En passant*, he admitted that the programme should continue to ‘refine, clarify and strengthen... the rigorous standards and processes of review in the use of combat drones so

³⁷³ Hugh Gusterson, *Drone: Remote Control Warfare* (Cambridge: MIT Press, 2017), p. 160; see also Sarah Kreps and Micah Zenko, ‘The Next Drone Wars; Preparing for Proliferation,’ *Foreign Affairs* Vol. 93 (2014), p. 68.

³⁷⁴ Ian Shaw, *Predator Empire: Drone Warfare and Full Spectrum Dominance* (Minneapolis: University of Minnesota Press, 2016), p. 5.

³⁷⁵ Ibid, p. 44; see also Chris Woods, *Sudden Justice: America's Secret Drone Wars* (Oxford: Oxford University Press, 2015).

³⁷⁶ Marcus Schulzke, *The Morality of Drone Warfare and the Politics of Regulation* (London: Palgrave, 2017), pp. 11-12; see also Jutta Brunnée and Stephen J. Toope, ‘Self-defence Against Non-State Actors: Are Powerful States Willing but Unable to Change International Law?’ *International & Comparative Law Quarterly* Vol.67, No.2 (2018), pp. 263-286.

³⁷⁷ Ibid, p.12; see also Marcus Schulzke, ‘Drone Proliferation and the Challenge of Regulating Dual-Use Technologies,’ *International Studies Review* Vol.21, No.3 (2019), pp. 497-517.

that targeted strikes conform to [legal] principles'.³⁷⁸ Refuting the claim of critics, Brennan argued that nothing in international law bans the US from using drones to target terrorist organizations with which they are currently in armed conflict.³⁷⁹ Brennan essentially sees this activity as akin to the relatively unrestricted use of area bombing during the Second World War. Yet without proper transparency, lethal drone strikes cannot be accurately verified as adhering to just war principles.

Moreover—what 'rigorous standards and processes of review' is Brennan referencing? Is the CIA claiming to regulate itself? Independent oversight is necessary to ensure that the drone programme adheres to international laws. But this requires a modicum of transparency—something the CIA-led drone programme is currently lacking and seemingly surreptitiously preventing.

Similarly, during a speech at Northwestern University Law School, Eric Holder, who served as the 82nd US Attorney General, echoed Brennan's sentiments. In his presentation, Holder claimed that '[America was at] war with a stateless enemy' and was therefore permitted to infringe specific laws.³⁸⁰ Unfortunately, there is an apparent technical problem with his statement. The United States cannot be at war with a terror group. Under international law, it is impossible for the U.S, or any nation for that matter, to be at war with a non-state actor.³⁸¹ This is a problem that extends beyond the specific case of drones and applies to so many other US security policy aspects since 9/11. One might argue that in practice, the United States has come close to modifying international law, and *de facto* is at war with certain non-state groups.

Sir Christopher Greenwood, a British Judge in the International Court of Justice, noted that international law dictates that one cannot be at war with a stateless enemy (which terrorist

³⁷⁸ John O. Brennan, *The Ethics and Efficacy of the President's Counter-terrorism Strategy*, Speech given at the Woodrow Wilson Centre, 30 April 2012.

³⁷⁹ Transcript from John Brennan Speech on Drone Ethics, *Talk of the Nation*, 01 May 2012.

³⁸⁰ Eric H. Holder Jr., 'Attorney General Eric Holder Speaks at Northwestern University School of Law,' *The United States Department of Defence—Justice News*, 05 March 2012.

³⁸¹ See also Mary Ellen O'Connell, Christian J. Tams, and Dire Tladi, *Self-Defence Against Non-State Actors*, Vol. 1. (Cambridge University Press, 2019); and Federica I. Paddeu, 'Use of Force Against Non-State Actors and the Circumstance Precluding Wrongfulness of Self-Defence,' *Leiden Journal of International Law* Vol.30, No.1 (2017), pp. 93-115.

organizations are); to claim this would distort the law.³⁸² Since 9/11 was a crime and not an act of war, it should therefore be treated as a crime—and nothing more. Hence, state claims of anticipatory self-defence against non-state terror groups are quite challenging to justify, as specific actions executed with this excuse in mind risk being viewed as a violation of current (customary/written) international laws.³⁸³

The Inefficacy & Incompatibility of Lethal Military Drones

Lethal drones lack a graduated, proportional response. Arguably, their operating characteristics sit awkwardly with the changing enemy profile and international law requirements and just war theory principles. In 2015, at the G7 summit in Germany, Obama even admitted that the US ‘[did not] yet have a complete strategy to defeat ISIL.’ No strategy, but years of trial and error—with civilian lives hanging in the balance. The reality may be that the United States has a strategy that it does not wish to admit to, namely, to kill terrorists faster than they can be replaced. This is often referred to in coded language and often cast up in official circles as a debate between counter-terrorism and counter-insurgency. Yet Richard A. Clarke, a former counter-terrorism czar under the Bush administration, has argued that high civilian casualties only serve to incite anger amongst the local populations, resulting in a surge of recruitment and radicalization. So instead of eliminating terrorists, these policies create them.³⁸⁴

³⁸² Christopher Greenwood, ‘War, Terrorism and International Law,’ 56 *CURR. LEG. PROBS.* 505, 529, 2004; see also, Mary Ellen O’Connell, ‘Enhancing the Status of Non-State Actors Through a Global War on Terrorism,’ 43 *Columbia Journal of Transnational Law* 435 (2005); see also Terry D. Gill and Kinga Tibori Szabo, ‘Twelve Key Questions on Self-Defence Against Non-State Actors—And Some Answers,’ *Israel Yearbook on Human Rights*, Vol. 50 (Nijhoff: Brill, 2020), pp. 167-205.

³⁸³ An interesting issue to watch would be the instruction of AI with humans barely in the loop. Military advancements are inching evermore towards the use of AI-driven killer drones who, without any human input, decide who to target, where and how. International laws are inept at addressing the issues stemming from human directed drones, it will certainly be interesting to see how these laws address (if at all) the issue of AI-driven drones and similar military technology in the future.

³⁸⁴ Richard A. Clarke, ‘Former Counter-terrorism Czar Richard Clarke: US Drone Program Under Obama Got Out of Hand,’ *Democracy Now*, 02 June 2014; see also Tony Nasser, ‘Modern War Crimes by the United States: Do Drone Strikes Violate International Law-Questioning the Legality of US Drone Strikes and Analyzing the US Response to International Reproach Based on the Realism Theory of International Relations,’ *Southern California Interdisciplinary Law Journal* 24

A 2016 Intelligence Report, compiled by the Soufan Group, confirmed Clarke's view. It found that there had been an increase in terroristic activities in countries where the US had conducted drone strikes—including Afghanistan, Somalia, Yemen, Libya, Pakistan, Iraq and Syria.³⁸⁵ Suggesting once more that lethal drone operations in every country where the US had launched these strikes was experiencing counterproductive outcomes.

The American government glosses over the disturbing nature of targeted killings. Drone strikes are publicized as 'successful' for killing their intended target, but the accompanying consequences of civilian casualties are rarely if ever, mentioned. Illustrative of this was the American government deemed that the drone operation which killed Anwar al Awlaki was a 'success.' Al Awlaki was an American-born jihadist who was accused of leading an aggressive jihad campaign, for which he was targeted and killed by a US drone strike in Yemen on May 5th, 2011. However, the US government neglected to mention the collateral damage this drone strike caused in the memo.³⁸⁶ Nine children, including Nawar Anwar al Awlaki (the daughter of Anwar al Awlaki), were murdered in the process.³⁸⁷ It was reported that she bled to death in two hours.³⁸⁸ She was only eight years old. Still, the consequences of covert military programmes do not solely affect those on the receiving end of such operations.

Drone wars are not fought on virtual battlefields with fictional deaths. The only similarity with video games is the ability to engage in combat from the comfort of an armchair—wherein the operator faces 'no risk of physical harm as a result of their geographical distance from the

(2014), p. 289. Accessed at: https://www.democracynow.org/2014/6/2/former_counterterrorism_czar_richard_clarke_us

³⁸⁵ Soufan Group Intelligence Brief, 'Counter-terrorism from 20,000 Feet,' *Soufan Group*, 2016.

³⁸⁶ Alexander Farrow, 'Drone Warfare as a Military Instrument of Counter-terrorism Strategy,' *Air & Space Power Journal* (2016), p. 8.

³⁸⁷ Namir Shabibi and Nasser al Sane, 'Nine Children Killed: The Full Details of Botched US Raid in Yemen,' *The Bureau of Investigative Journalism*, 09 February 2017.

<<https://www.thebureauinvestigates.com/stories/2017-02-09/nine-young-children-killed-the-full-details-of-botched-us-raid-in-yemen>>

³⁸⁸ For greater discussion on this case, see Shabibi and al Sane, 'Nine Children Killed: The Full Details of Botched US Raid in Yemen.'

<<https://www.thebureauinvestigates.com/stories/2017-02-09/nine-young-children-killed-the-full-details-of-botched-us-raid-in-yemen>>

battlefield.³⁸⁹ However, it is important to note that drone operators themselves are not immune to the psychological horror generated by drone strikes. Many pilots report suffering severe psychological distress, including post-traumatic stress disorder (PTSD), even if their armed conflict experience has been limited to what they observed through the camera lens. Beyond PTSD, simple human guilt has also played a factor in the mental wellbeing of drone pilots. Richard Engel, a chief foreign correspondent for NBC News, examined the mass exodus of drone operators and concluded that many leave the programme due to the guilt that weighs on their conscience.³⁹⁰ Many operators reported feeling helpless and remorseful for their involvement in targeted killing missions, in which they were expected to execute individuals without hesitation or consideration.³⁹¹

Ret. US Gen. Michael Flynn, who served briefly as US National Security Advisor in 2017, posited that in the face of recent evidence documenting the negative consequences associated with lethal drone strikes, perhaps more significant consideration should be made before instinctively resorting to this weapon in armed conflicts.³⁹² Despite Flynn's claims, adamant advocates of the CIA-led drone program, like Charles Dunlap Jr., for instance, maintain that critics' futile arguments demonstrate that they offer 'no alternative.'³⁹³ Perhaps the issue here is not to offer an

³⁸⁹ BBC Staff, 'UN Official Criticizes US over Drone Attacks,' *BBC News*, 02 June 2010; see also Jeff McMahan, *Killing by Remote Control: The Ethics of an Unmanned Military* (Oxford University Press, 2013).

³⁹⁰ Richard Engel, 'Former Drone Operator Says He's Haunted by His Part in More Than 1,600 Deaths,' *NBC News*, 06 June 2013; see also Wayne Chappelle, et al., 'An Analysis of Post-Traumatic Stress Symptoms in United States Air Force Drone Operators,' *Journal of Anxiety Disorders* 28.5 (2014), pp. 480-487; and Cherie Armour and Jana Ross, 'The Health and Well-Being of Military Drone Operators and Intelligence Analysts: A Systematic Review,' *Military Psychology* 29.2 (2017), pp. 83-98.

³⁹¹ Nicola Abé, 'Dreams in the Infrared: The Woes of an American Drone Operator,' *Spiegel Online International*, 14 December 2012; see also Jean L. Otto and Bryant J. Webber, 'Mental Health Diagnoses and Counseling Among Pilots of Remotely Piloted Aircraft in the United States Air Force,' *Medical Surveillance Monthly Report* Vol.20, No.3 (2013), pp. 3-8.

³⁹² Ibid (Flynn reasoned that if 'you drop a bomb from a drone...you are going to cause more damage, than you are going to cause good,' In his view, perhaps the best avenue would be to pursue a 'different approach' to the use of drones in counter-terrorism.)

³⁹³ Charles J. Dunlap Jr., 'Why Can't the Media be More Transparent About Drones?' *The Hill*, 21 March 2016; see also Muhammad Idrees Ahmad, 'The Magical Realism of Body Counts: How Media Credulity and Flawed Statistics Sustain a Controversial Policy,' *Journalism* 17.1 (2016), pp. 18-34; and Graeme Davies, Marcus Schulzke and Thomas Almond, 'Sheltering the President

alternative but rather to ensure that when counter-terrorism missions employ lethal drones, the justification for using such in 'self-defence' is legitimate, proportionate and necessary. Before proceeding to a discussion on international law and the criteria of self-defence, some contextual clarity on the technical processes must be achieved.

The use of drones in war has raised questions regarding their place in international law and, by extension, the doctrine of preemptive attacks under Article 51 of the UN Charter.³⁹⁴ Because drones offer unparalleled surveillance capabilities, this potentially allows a state to present this material as evidence and justify its decision to act preemptively in self-defence.³⁹⁵ This improvement in intelligence gathering may also 'diminish the danger of waiting until the last possible moment to act.'³⁹⁶ Despite the many benefits of military drones, such practices raise several legal and moral issues. Consequently, what happens when the very weapons we rely on for remote war and intelligence collection also facilitate more international law violations?

Ashley Deeks, a University of Virginia Law Scholar, posits that technological innovations will ultimately force international law governing the use of force to modernize. Many scholars agree that due to technological and geopolitical issues, the doctrine of preemptive self-defence is moving away from Caroline-type principles, and the need to re-examine this principle in international relations is growing. The necessity of contributing to the scholarship on this issue is

from Blame: Drone Strikes, Media Assessments and Heterogeneous Responsibility 2002–2014,' *The British Journal of Politics and International Relations* Vol.20, No.2 (2018), pp. 477-496.

³⁹⁴ See Afsheen John Radsan and Richard Murphy, 'The Evolution of Law and Policy for CIA Targeted Killing,' *Journal of National Security Law and Policy*, Vol.5 (2012), p. 439, 441; see also Jordan Paust, 'Remotely Piloted Warfare as a Challenge to the Jus ad Bellum,' from *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2017).

³⁹⁵ See William Broad and Mark Mazzetti, 'Yet Another Photo of Site in Syria, Yet More Questions,' *New York Times*, 27 October 2007 (includes a statement from a senior US intelligence official who confirms that various key Syrian sites had been observed by US spy satellites for years).

³⁹⁶ Deeks, 'Taming the Doctrine of Preemption,' p. 677; see also Richard Murphy and Afsheen John Radsan, 'Due Process and Targeted Killing of Terrorists,' *Cardozo Law Review* Vol.31 No.1 (2009), p. 405.

evident when considering the pace of current technological innovations and how rapidly inapplicable certain legal doctrines have already become.³⁹⁷

Apart from legal disagreements, further strain is added to self-defence doctrine by emerging technologies and geopolitical issues. Attacks can be more harmful, launched at shorter notice, and often covert, perhaps to hide the extent to which AI helps drive targeting. Sir Greenwood has also further argued that threats posed by terrorist organizations are far different from those posed by regular armed forces—because their timeline for executing attacks is much shorter.³⁹⁸ Yet officials often observe that most states have policies against negotiating with terrorists. Therefore, exhausting other avenues of diplomacy and negotiations with these non-state actors becomes incompatible with the doctrine of self-defence.³⁹⁹ Also, since extremist groups have successfully conducted past terror attacks across borders, it becomes increasingly acceptable in domestic political terms that states should (considering the historical evidence) be able to engage in self-defence against these actors before executing their intended (and possibly covert) plans.

In light of these developments, the legal restriction preventing states from acting until an attack has begun is viewed by national security principals as unrealistic as it is dangerous.⁴⁰⁰ John Brennan has even argued that the US and other states are keen to demonstrate that the concept of

³⁹⁷ Ibid, p. 678; see also Rosa Brooks, ‘Duck-Rabbits and Drones: Legal Indeterminacy in the War on Terror,’ *Stanford Law and Policy Review* Vol.25 (2014), p. 301; and Daniel R. Brunstetter and Arturo Jimenez-Bacardi, ‘Clashing Over Drones: The Legal and Normative Gap Between the United States and the Human Rights Community,’ *The International Journal of Human Rights* Vol.19, No.2 (2015), pp. 176-198; and Tyler J. Black, ‘Over Your Head, Under the Radar: An Examination of Changing Legislation, Aging Case Law, and Possible Solutions to the Domestic Police Drone Puzzle,’ *Washington and Lee Law Review* Vol.70 (2013), p. 1829.

³⁹⁸ Greenwood, ‘International Law and the Preemptive Use of Force,’ p.16; see also Doyle, *Striking First*, p.21; see also Milena Sterio, ‘The US Use of Drones in the War on Terror: The (Il)legality of Targeted Killings under International Law,’ *Case Western Reserve Journal of International Law* Vol.45 (2012), p. 197.

³⁹⁹ Deeks, ‘Taming the Doctrine of Preemption,’ p. 672; see also Harmonie Toros, ‘We Don’t Negotiate with Terrorists: Legitimacy and Complexity in Terrorist Conflicts,’ *Security Dialogue* Vol.39, No.4 (2008), pp. 407-426.

⁴⁰⁰ Which were not considered significant threats to warrant inclusion when Article 51 of the UN Charter was written.

imminence needs to be changed since it currently applies to traditional warfare—and terrorists engage in unconventional warfare, making this understanding outdated.⁴⁰¹

Issues also arise because states have not redefined the concept of imminence to address more modern technical threats.⁴⁰² In Greenwood's view, the concept of imminence would require redefinition to address the gravity and modernity of technological weapons and their unique delivery systems. Additionally, he calls for more evidence that the aggressor state has the means and intention to attack.⁴⁰³ A Chatham House project was developed to address the lack of clarity on the concept of imminence in self-defence. It examined the concept of imminence as it applied to current threats and posited that imminence could be applied to more modern preemptive self-defence cases if proof of a threat's gravity, the attacker's capability and the nature of the threat could be sufficiently demonstrated.⁴⁰⁴ But even as these projects crawl forward at a slow pace, the prospect of AI-driven targeting looms on the horizon; indeed, some lawyers suspect it may already be here.

For the time being, in practical terms, altering the criteria of imminence could only be legitimately done when addressing obvious rogue states and terror organizations. Before this can

⁴⁰¹ Remarks by John Brennan, 'Strengthening Our Security by Adhering to Our Values and Laws,' The White House, *Office of the Press Secretary*, 16, September 2011; see also James Steinberg, 'Preventive Force in US National Security Strategy,' *Global Politics and Strategy*, Vol. 47, No.4 (2006), p. 55, 58-59 (regarding inadequacy of relying on the decisions of the Security Council and the changing nature of terrorists are reasons why preemptive self-defence, according to the President, should be allowed to take a more permanent spot in national security policy), '[A]n increasing number of our international counterterrorism partners have begun to recognize that the traditional conception of what constitutes an 'imminent' attack should be broadened in the light of modern-day capabilities, techniques, and technological innovations of terrorist organizations.'

⁴⁰² Deeks, 'Taming the Doctrine of Preemption,' p. 674; see also Dapo Akande and Thomas Liefländer, 'Clarifying Necessity, Imminence, and Proportionality in the Law of Self-Defense,' *American Journal of International Law* Vol.107, No.3 (2013), pp. 563-570.

⁴⁰³ Greenwood, 'International Law and the Preemptive Use of Force,' pp. 16-17; see also Onder Bakircioglu, 'The Contours of the Right to Self-Defence: Is the Requirement of Imminence Merely a Translator for the Concept of Necessity?' *The Journal of Criminal Law* Vol.72, No.2 (2008), pp. 131-169.

⁴⁰⁴ Elizabeth Wilmschurst, *Principles of International Law on the Use of Force by States in Self-Defence* (London: Chatham House, 2005); see also Michael Schmitt, 'Responding to Transnational Terrorism Under the Jus Ad Bellum: A Normative Framework,' *Naval Law Review*, Vol.56, No.1 (2008), p.11.

be done, however, a few prerequisites need to be fulfilled. The first is to demonstrate that the enemy has access to, and an affinity for, the use of unconventional weapons. The second prerequisite requires proof that the adversary has committed and intends to launch attacks in the future.⁴⁰⁵ When states exhibit such behaviour, they are far more vulnerable to having their sovereignty violated. Many legal scholars argue that states which possess unconventional weapons and have a history of aggressive behaviour (with the inclination to continue this trend) should be ‘accorded less respect and be considered more violable than that of other states that engage in similar behaviour but do not possess such weapons.’⁴⁰⁶

The key question that attends any legal evaluation of a preemptive strike is, ‘did it take place during the last window of opportunity before a certain (or almost certain) attack?’⁴⁰⁷ Yet Greg Travalio and John Altenburg acknowledge that it is increasingly difficult to identify the point at which a terror attack is ‘imminent’ [or if it will occur at all]. Regardless of these issues, they suggest that the concept of imminence can still be applied to terror organizations in an adapted format.⁴⁰⁸ They argue that a ‘state may legitimately act on the assumption that, given the consistently demonstrated unconventional nature and operational methods of certain international terrorist organizations, an attack by such organizations is always ‘imminent.’ Some would even suggest that if a terrorist organization has committed prior attacks or has explicitly or implicitly announced its intention to do so, then any future attack can be considered ‘imminent.’ In other words, by considering the history of the enemy and inferring the likelihood of a future attack, it

⁴⁰⁵ For instance, the Bush administration argued that Saddam Hussein’s use of chemical weapons against Iraqi Kurds in the 1980s indicated that he would use nuclear or biological weapons against other states if he possessed them (White House, ‘President Bush Outlines Iraqi Threat: Remarks by the President on Iraq,’ *White House Press Office*, (Cincinnati, Ohio: The White House, 2002).

⁴⁰⁶ Mueller et. al., *Attacking in Self-Defence*, p. 63; see also Kerstin Fisk, Jennifer L. Merolla and Jennifer M. Ramos, ‘Emotions, Terrorist Threat, and Drones: Anger Drives Support for Drone Strikes,’ *Journal of Conflict Resolution* Vol.63, No.4 (2019), pp. 976-1000.

⁴⁰⁷ Michael N. Schmitt, ‘Preemptive Strategies in International Law,’ *Michigan Journal of International Law*, Vol. 24, No.2 (2003), pp. 534 – 36; see also Miriam Sapiro, ‘Iraq: The Shifting Sands of Preemptive Self-Defense,’ *The American Journal of International Law* Vol.97, No.3 (2003), pp. 599-607.

⁴⁰⁸ Mueller et. al., *Attacking in Self-Defence*, p. 61; see also Todd Landman, ‘Imminence and Proportionality: The US and UK Responses to Global Terrorism,’ *California Western International Law Journal* Vol.38 (2007), p. 75; and Elisa Kantor, ‘New Threats, Old Problems: Adhering to Brandenburg’s Imminence Requirement in Terrorism Prosecutions,’ *George Washington Law Review* Vol.76 (2007), p. 752.

would permit the use of preemptive force even if the requirement of imminence is not yet proven. This approach is rather like the medieval practice of deeming specific individuals or groups ‘outlaws,’ outside the protection of the law—indeed, some might observe that this is in practice what the United States has done.⁴⁰⁹

Meanwhile, a subsequent and connected question arises, namely ‘whether the right to exercise self-defence ends once an initial attack has been dealt with, or whether the right to exercise self-defence remains operative until the threat has been neutralized.’⁴¹⁰ By this logic, does the ‘global war on terror’ only end when every last terrorist is eliminated, and all perceived threats are mitigated? And until then, should laws restricting the use of force slacken, most requests for preemptive ‘self-defence’ be viewed as legitimate, and most forms of oversight be disregarded to provide states with the ‘necessary’ power to address such ‘imminent’ threats? Following recent events, perhaps this no longer exists as a purely hypothetical question. However, one thing remains clear: current international laws, especially the customary law of self-defence, remains subjective and inapplicable to modern threats and the strategies necessary to combat them. Expectedly, countries, like the United States, have embraced this as an opportunity to subjectively interpret and claim adherence to existing laws in an attempt to feign legitimacy. Thus, international law's subjectivity and the subjectivity of American interpretation and engagement with these legal doctrines remains a pressing problem that must be addressed to constrain questionable practices, like those observed in the US drone program.

Intersecting Literature

It is widely understood that international law facilitates the analysis of state sponsored pre-attack self-defence operations. Still, it is not the only discipline which underpins this subject. Several

⁴⁰⁹ Greg Travalio and John Altenburg, ‘Terrorism, State Responsibility, and the Use of Military Force,’ *Chicago Journal of International Law*, Vol. 4, No.1 (2003), pp. 97 – 120, 116; see also Michael Byers, ‘Terrorism, the Use of Force and International Law After 11 September,’ *International Relations* Vol.16, No.2 (2002), pp. 155-170.

⁴¹⁰ Terry Gill, ‘When Does Self-Defence End?’ from *The Oxford Handbook of the Use of Force in International Law* (Oxford; Oxford University Press, 2016); see also Natalia Ochoa-Ruiz and Esther Salamanca-Aguado, ‘Exploring the Limits of International Law Relating to the Use of Force in Self-Defence,’ *European Journal of International Law* Vol.16, No.3 (2005), pp. 499-524.

overlapping fields of literature thus necessitate consideration, inclusion and discussion. To strike a balance between breadth of literature and depth of analysis, only a select group of fields will be introduced, each bolstered by scholarly works chosen for their relevance, impact and modernity. These intersecting literature fields include policy taboos, norm erosion, covert actions and secrecy in statecraft, assassination strategies, legitimacy and post-truth, as well as a brief but necessary discussion on the narrative turn in foreign policy analysis.

Policy Taboos

Taboos are unacceptable actions or practices generally banned or prohibited on the basis of morality or taste, or because they are considered profane or dangerous.⁴¹¹ Contemporary taboos, like racism, sexism, incest and ethnocentrism, were at one point commonly accepted or overlooked. Now, with evolving social customs and standards, these practices are considered appalling, thus strengthening the taboos regarding them.

Two types of taboos exist. The first refers to ones which are widely understood as unacceptable practice, while the second are contested but argued to be a ‘necessary evil’. The latter justification is one which the United States has leaned towards on more than one occasion. This is somewhat ironic, given that the US has always advocated for democratic, legitimate and lawful tactics by ensuring that its domestic practices are checked for adherence to international laws. Although such policies and practices are flaunted as morally right, some have become ever more unethical. Existing laws prohibiting assassinations, for instance, are being disregarded or infringed during covert operations to obtain strategic wins.

Laws like the EO12333, are policy taboos if infringed, but the CIA has violated them on numerous occasions. The most recent and public of which was the strike on Soleimani. The US

⁴¹¹Merriam-Webster Dictionary, “Taboo,” Merriam-Webster: <https://www.merriam-webster.com/dictionary/taboo>: ‘banned on grounds of morality or taste; banned as constituting a risk; forbidden to profane use or contact because of what are held to be dangerous supernatural powers; a prohibition imposed by social custom or as a protective measure; something that is not acceptable to say, mention, or do; a prohibition against touching, saying, or doing something for fear of immediate harm from a supernatural force.’

has tried to circumnavigate this taboo by arguing that they possess classified intelligence about threats which legitimizes its actions, however contentious, in order to mitigate the dangers these pose. In essence, the US government tried to ‘sell’ its infringement of the taboo as a ‘necessary evil’ in order to address a greater evil: terrorism. When this rationalization is deemed unsatisfactory, the US redefined practices perfunctorily. In the most contentious of cases, the US had chosen to keep such operations, practices or missions covert; keeping them away from the prying eyes of those who might seek to question the legitimacy of such actions. The Soleimani strike changed this norm, resulting in this policy taboo violation becoming public.

While the majority of society may view some taboos as universal, and thus criminalize them, violations will still occur, thanks in part to motivators like self-interest and self-preservation.⁴¹² These can occur in one of two ways. The first is to seek a redefinition of the practice, in an attempt use politically correct euphemisms in order to distance itself from the taboo, if only superficially. The US attempted to do this by using the term ‘targeted killing’ to distance itself from the practice of execution, or from laws which ban such strategies. The second is to avoid the social stigma altogether by covertly or privately infringing these taboos, thus shielding itself from public criticism. Regardless of how the violation occurs, there is but one guaranteed outcome: shame.

Despite being demonized for their unwillingness to abide by international laws or moral/ethical standards, terror organizations are paradoxically capitalizing on the US’s CT policy taboo violations, and its resulting shame, as tools for recruitment and radicalization.⁴¹³ Shame creates a greater ‘us versus them’ divide, one which extremist organizations exploit effectively. CT operations which violate international law or result in high numbers of civilian casualties are used to kindle the fires of local dissent, resulting in greater numbers of followers and members for extremist organizations.⁴¹⁴ As evidenced, violating policy taboos is far more harmful for the US counterterror program than it is advantageous. Legitimacy and honour are necessary elements in

⁴¹² It is as the old proverb goes, ‘forbidden fruit is the sweetest.’

⁴¹³ Matthew Kriner, ‘Tackling Terrorism’s Taboo: Shame,’ from *Perspectives on Terrorism*, Vol. 12, Issue 2, April 2018: pp. 19-31.

⁴¹⁴ Michael Stohl, ‘The State as Terrorist: Insights and Implications, Democracy and Security,’ from *Journal of Democracy and Security*, Vol. 2, Issue 1, 24 January 2007: pp. 1-25

order for a state, and its actions, to be viewed as just. Policy taboo violations stain this reputation, and the resulting public criticism casts doubt over its lawfulness.

Counterterrorism operations should not cause more harm than the benefits they intend to reap. The response to threats must be proportional, and weapons used must not target civilians nor pose a significant risk to their safety. Certain weapons are considered taboo, even in counterterrorism operations. These include biological, nuclear and radiological weaponry, whose effects cannot be easily contained. Still, there are similarly contentious lethal weaponry which are still used by the US (more specifically its intelligence agencies) in such operations. The most notable of which are lethal unmanned aerial vehicles. These drones have reaped both favourable and unfavourable outcomes. Sometimes these were unavoidable, other times it was due to human error and faulty intelligence. The problem is that the CIA is beginning to use lethal drones in cases when threat assessments indicate that the risks outweigh the rewards. The motivation for doing so, and violating these established policy taboos like remote executions, are derived from the CIA's ambition to defeat terrorism—even if it means resorting to unethical/immoral/unlawful practices to do so. The Soleimani strike is just one such example of this.

The CIA is attempting to turn policy taboo violations into new traditions. It is hunting down foreign government officials and executing them for their alleged ties to terror organizations, whilst remaining unfazed as to the potential legal or political ramifications such actions may trigger. Although this is not the first time the CIA has participated or orchestrated contentious CT operations, it does mark the first time that such an operation was made public. Particularly given the status of the target, the mode in which he was killed, the location in which the strike was carried out, and the lack of intelligence presented to corroborate the claim that Soleimani posed an imminent threat warranting his immediate execution.

The complete disregard for the UN Security Council, Congress, domestic US laws, the Gang of Eight and international laws (including the right to territorial sovereignty) created an unprecedented setting which brought about a series of increasingly dangerous consequences from the downing of a passenger jet to missile strikes on a military base that resulted in hundreds of

severe brain injuries, underpinned by a complete disregard for diplomacy in favour of escalating threats on social media.

Perhaps the US is operating under a distorted assumption. How could one fathom it a policy taboo to deal diplomatically with a country, but not so to execute one of their generals in a third-party state? Yet this is not a new phenomenon. The issue of policy taboos, and their violation by the US during CT operations, has been examined by several key scholars over recent years. Joseba Zulaika, a professor at the University of Nevada, has extensively researched the impact of policy taboos on counterterrorism strategies. In 2012, he published an article in the *Journal of Critical Studies on Terrorism* which examined the influence that fantasy, taboos and mystical causation have on counterterror operations and their respective outcomes.⁴¹⁵ Zulaika has posited that the introduction and reliance on remote weaponry in counterterror operations has created a state of fantasy, wherein drone operators stalk and eliminate targets on virtual screens, not dissimilar to a computer game.⁴¹⁶ This devolution of counterterrorism from war to fantasy has created a self-fulfilling prophecy, evidenced by an increase of terroristic activity in regions where counterterror operations had taken place. Years later, he co-authored a book with William Douglass which sought to determine how the public perception of terrorism influence our understanding of taboos, as well as how they are developed, maintained and perpetuated.⁴¹⁷ Zulaika and Douglass found that some counterterror programs intentionally violate policy taboos with the intention of redefining or restructuring existing norms. This matter has been identified by other scholars as well.

Regina Heller, a senior researcher at the University of Hamburg, has studied the negative effects of normative augmentation on counterterrorism policy. She discovered that, since 9/11, the US has sought to redefine a host of norms in order to ensure that their agencies have greater powers

⁴¹⁵ Joseba Zulaika, 'Drones, Witches and Other Flying Objects: The Force of Fantasy in US Counterterrorism,' from *Critical Studies on Terrorism*, Vol. 5, Issue 1, 10 April 2012: pp. 51-68.

⁴¹⁶ Ibid, p. 65.

⁴¹⁷ Joseba, Zulaika and William Douglass, *Terror and Taboo: The Follies, Fables, and Faces of Terrorism*, Routledge, 2016.

during counterterror operations.⁴¹⁸ Heller found that this redefinition of norms in favour of counterterror operations came at a price. The priority given to CT resulted in a weakening of human rights which, ‘in the long run, may lead to a setback in dynamic hollowing out established human and civil rights norms.’⁴¹⁹

This conclusion was researched years later by Andrea Birdsall, a senior lecturer at the University of Edinburgh. Building upon Heller’s earlier observations, Birdsall posited that the US had become a ‘norm entrepreneur’ that ‘purposefully works to alter prevalent norms related to the use of drones in counterterrorism efforts’ with the intention of changing the ‘meaning of a number of international legal concepts to justify its policy decisions.’⁴²⁰ It is evident that policy taboos no longer constrain nor deter counterterror operations. Rather, they encourage covert action, norm erosion and a general redefinition of practices for the purpose of dissociating from existing taboo policies. The following section will examine the issue of norm erosion in greater detail.

Norm Erosion

In international relations literature, norms are defined as ‘collective expectations for the proper behavior of actors with a given identity.’⁴²¹ Like policy taboos, these norms are founded on a mutual understanding that certain practices remain acceptable, while others remain unacceptable. The use of tactical nuclear weapons in armed conflict is considered just one example of these norms, although there have been historical incidences when these have been violated by states (i.e. the bombing of Hiroshima and Nagasaki by the United States).

⁴¹⁸ Regina Heller et. al., ‘The ‘Dark’ Side of Normative Augmentation – The Case of Counterterrorism Policy,’ from *Global Constitutionalism*, Vol. 1, Issue 2, Cambridge University Press, July 2012: pp. 278.-312.

⁴¹⁹ Ibid, p. 278.

⁴²⁰ Andrea Birdsall, ‘Drone Warfare in Counterterrorism and Normative Change: US Policy and the Politics of International Law’, from *Global Society*, Cambridge University Press, Vol. 32, No. 3, April 2018: pp. 241-262.

⁴²¹ Peter J. Katzenstein, *The Culture of National Security: Norms and Identity in World Politics*, New York: Columbia University Press, 1996: p. 5

Another example of an important norm in international relations is the Responsibility to Protect (R2P) doctrine which was adopted by the UN in 2005. The adoption of this principle is ‘widely acknowledged to represent one of the great normative advances in international politics since 1945.’⁴²² The R2P is understood to be ‘an international norm that seeks to ensure that the international community never again fails to halt the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity.’⁴²³ It is founded on three pillars, each one outlining the responsibility of states and the international community in ensuring the protection of civilians from mass atrocity crimes, and the adherence of state practices to the UN Charter.⁴²⁴ By employing unethical and increasingly dangerous strategies and weapons in their counterterror program, the United States is violating the R2P norm adopted.

Yet, little is done to punish, or course correct such programs. As such, these extreme practices are becoming mainstream policies with its covert agencies—resulting in operations which are difficult to defend legally, morally or strategically. Recent intelligence has confirmed that the US drone program is perpetuating crimes against humanity with high civilian casualty rates and indemonstrable distinction or proportionality. Thus, remote killing by drone erodes the commitment to R2P and demand a reassessment of US foreign policy and covert operation stratagems to ensure greater compliance to international law and existing norms, like the R2P.

The UN is an institution that dictates norms and obligates its members to abide by them. However, enforcement has proven rather difficult as some member states, including the US, have chosen to ignore the UN Security Council altogether. During the Soleimani strike, for instance, the US did not engage in a pre-attack consultation, nor did it send intelligence to justify the strike post-op. This disregard for the UN and its governing bodies has resulted in both the erosion of

⁴²² Ramesh Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*, Routledge, 2011.

⁴²³ For more information, see the Global Centre for the Responsibility to Protect; www.globalr2p.org

⁴²⁴ Ibid: Pillar 1: Every state has the responsibility to protect its populations against mass atrocity crimes like genocide, war crimes, crimes against humanity and ethnic cleansing. Pillar 2: The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility. Pillar 3: If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.

norms, and an erosion of traditional battlefield boundaries. It should be noted that norm erosion does not occur suddenly. Rather it comes about at a gradual pace. Eric Posner even presupposed that a state ‘could slide into an authoritarian regime without a real crisis ever taking place.’⁴²⁵

Thus, a simple violation of norms does not immediately result in an erosion of norms. Rather it is the consequences of the violation which determine whether or not the norms become ‘eroded.’ So, if no negative backlash ensues, then the extreme becomes mainstream. However, if backlash ensues, this demonstrates that the norm is still viable, and the violation of the norm did not weaken nor erode it. Several scholars have researched the issue of norm erosion, and a few of their most notable works on the topic will be discussed herein.

While scholars seek to understand how norms change, few tackle the difficult task of determining what a norm is and how it affects foreign policy. One scholar who took on this challenge was Tony Nyhamar.⁴²⁶ He sought to do so within the African context and developed an empirical way to measure the causal influence of norms in foreign policy. His findings set the foundation for further research by scholars like Vaughn Shannon who then analyzed the ways in which norms constrain and redefine foreign policy, but also how national interests weaken and alter existing norms. Shannon thus examined both norm violations and norm enforcement which allowed for an interesting observation to be made. Regardless of the top-down or bottom-up approach undertaken, special consideration must be given to ‘how and when foreign policy promotes norms and norm diffusion in the broader international community.’⁴²⁷ Timing matters, as Shannon observed. The state of affairs at the global level also determines whether a norm will survive or slowly erode from subsequent violations by states.

Nicole Dietelhoff and Lisbeth Zimmermann were similarly interested in finding out under what conditions challenges to norms would decrease their robustness. Their research resulted in a

⁴²⁵ Eric Posner as quoted in Tom McCarthy, ‘Donald Trump and the Erosion of Democratic Norms in America,’ *The Guardian*, 02 June 2018.)

⁴²⁶ See Tony Nyhamar, ‘How Do Norms Work? A Theoretical and Empirical Analysis of African International Relations,’ *The International Journal of Peace Studies*, Vol. 5, No. 2, Winter 2000: pp. 27-43.

⁴²⁷ Vaughn Shannon, ‘International Norms and Foreign Policy,’ *Oxford University Encyclopedia of Politics*, 28 June 2017: p. 2.

rather interesting but similarly disheartening conclusion. They found that the international obligation to observe and respect norms was diminishing, and that this could be attributed in part to the fading power of institutions like the UN who are tasked with enforcing them.⁴²⁸ Although this observation is important, the degree to which the strength or robustness of a norm changes becomes an important point to investigate. Elke Krahmann did just that.

In her 2013 article, she examined four variables which could be used to measure the change in international norms. Krahmann posited that it would be possible to empirically ‘investigate possible changes in the strength and meaning of norms [through an analysis of] modifications in state behaviour, state responses to norm violation, the promulgation of varying interpretations of the norm in national and international laws and regulations and changes in norm discourse.’ She concluded that the US is not only influencing international norms, particularly those which deal with armed conflict, but that these recurrent violations are resulting in a self-serving redefinition of such norms.⁴²⁹

But why do great powers, like the United States, seek to violate international norms? Could they not simply advocate for their reform? Scott N. Romaniuk and Francis Grice found that violating norms or advocating for their reform reach the same outcome, but at different speeds.⁴³⁰ In cases of urgency or national security, states will therefore favour the former option regardless of its perceived ethicality. It is for this reason that legal limits on executive powers should be pursued. To avoid the potential of increasingly regular norm violations, scholars like Tiberiu Dragu and Mattias Polborn suggest that liberal institutions should be restructured to focus on the new social objective of terrorism prevention.⁴³¹ Incentives for norm abidance should exist alongside

⁴²⁸ Nicole Deitelhoff and Lisbeth Zimmermann, ‘Norms under Challenge: Unpacking the Dynamics of Norm Robustness,’ *Journal of Global Security Studies*, Vol. 4, Issue 1, January 2019: pp. 2-17.

⁴²⁹ Elke Krahmann, ‘The United States, PMSCs and the State Monopoly on Violence: Leading the Way Towards Norm Change,’ *Security Dialogue*, Vol. 44, Issue 1, 2013: pp.53-71.

⁴³⁰ Francis Grice and Scott N. Romaniuk, ‘Norms, Norm Violations, and IR Theory,’ *E-International Relations*, 15 November 2018.

⁴³¹ Tiberiu Dragu and Mattias Polborn, ‘The Rule of Law in the Fight against Terrorism,’ *American Journal of Political Science*, Vol. 58, No. 2, 2014: pp. 511-525.

more stringent punishments for norm violators. These could help curtail the potential of norm erosion, or at the very least make it less likely to occur.

Since the UN can no longer constrain state actions nor punish violators effectively, norm erosion must be tackled multifacetedly. Institutions, as Dragu and Polborn noted earlier, must also be factored into the equation. According to John Hardy, it is a complex of circumstances which are collectively contributing to norm erosion. However, the most evident of which are American unipolarity, the Bush Doctrine and the diminishing powers of the UN. Thus, these issues must be dealt with in tandem if the problem of norm erosion is to be addressed effectively.⁴³² Otherwise, the negative consequences from norm erosion will continue to compound. These will continue to include, as Rosa Brooks found, the erosion of traditional battlefield boundaries during armed conflicts until distinctions between civilian and hostile areas are completely eroded.⁴³³ This is particularly problematic when considering the ease with which the US launches remote drone attacks in foreign lands with little hesitation, and far less oversight.⁴³⁴

Norm erosion remains a real threat in international relations. However, as some scholars have found, there are ways to mitigate this threat and ensure that violations are prevented, or at the very least punished effectively. Likewise, a focus on institutions in the context of this problem may also allow for a more robust system of norm enforcement. Still, there are some scholars who believe that the current perspective on norm erosion is too limited and ‘fails to grasp such incremental processes in that it tends to limit its analytical view to single, narrowly defined norms and over emphasizes external shocks.’⁴³⁵

⁴³² John Hardy, ‘Counterterrorism: Altering International Norms in the Twenty-First Century,’ *E-International Relations*, 26 August 2008.

⁴³³ Rosa Ehrenreich Brooks, ‘War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror,’ *Georgetown Law Faculty Publications and Other Works*, 2004: pp. 675-761.

⁴³⁴ See also Benjamin Wittes, ‘Notes on the Eorsion of Norms of Armed Conflict,’ *Lawfare*, 14 January 2015; and Ian Clark et al., ‘Crisis in the Laws of War? Beyond Compliance and Effectiveness,’ *European Journal of International Relations*, Vol. 24, Issue 3, 2017: pp. 319-343.

⁴³⁵ Mathias Großklaus, ‘Friction, Not Erosion: Assassination Norms at the Fault Line Between Sovereignty and Liberal Values,’ *Contemporary Security Policy*, Vol. 38, Issue 2, 2017: p. 260.

Mathias Großklaus has posited that greater analysis of ‘meta-norms’ may be the way to go, particularly since state-sponsored assassination is moving towards normalization. Großklaus also maintained that there is a dire ‘need for a more comprehensive account of normative change that highlights the surrounding meta-norms that are able to connect single norms to their larger position within the international order.’⁴³⁶ This is because the evolution of a norm is just as important as its potential erosion. To avoid the negative backlash associated with norm erosion, some states have chosen to conduct contentious activities covertly. The following section will examine this field of literature to show the intersectionality with this thesis and the fields examined thus far.

Covert Action & Secrecy in Statecraft

According to the US Department of Defence, a covert operation is defined as ‘an action of activity that is planned and executed to conceal the identity of, or permit plausible deniability by, the sponsor.’⁴³⁷ The objectives and motivations behind such missions are usually unknown, but they can have political, military, strategic or even financial implications. The US has employed its intelligence agencies, particularly the CIA, to direct covert or clandestine operations around the world with the purposes of gathering intelligence, influencing foreign policy or undermining enemy forces.⁴³⁸

But covert operations are not new. The use of spies has ancient origins but, as Michael Warner points out, covert action has since become ‘the secret supplement to war and diplomacy, employed at the margins of conflict to shift patterns of trust and allegiance.’⁴³⁹ This ‘third option,’ between diplomacy and war fighting, was also analyzed by Loch K. Johnson. He reasoned that covert meddling in the affairs of foreign governments was a foreign policy objective that the US has relied upon more than any other state. Despite its lack of ethicality, the effectiveness of

⁴³⁶ Ibid, p. 280.

⁴³⁷ United States Department of Defence, ‘Covert Action,’ *DoD Dictionary of Military and Associated Terms*, p. 53.

⁴³⁸ See for example Tony Mendez and Christopher Moran, *Company Confessions: Secrets, Memoirs, and the CIA*, St. Martin's Publishing Group, 2016; and Harry Rositzke, *The CIA's Secret Operations: Espionage, Counterespionage and Covert Action*, Routledge, 2019: pp.1-287.

⁴³⁹ Michael Warner, ‘A Matter of Trust: Covert Action Reconsidered,’ *Studies in Intelligence*, Vol. 63, No.4, December 2019: p. 33.

clandestine operations has ensured that this practice is employed regularly in a range of aggressive initiatives from ‘secret propaganda operations to political and economic activities, as well as (at the extreme) paramilitary attacks and assassinations.’⁴⁴⁰

By virtue of being covert, such operations require little, if any, justification. Plausible deniability thus shields all those involved—especially those who authorize such activities—from any potentially negative consequences. This is especially true of directors and several chief executives of US intelligence agencies who, as William J. Dougherty examined, have rebranded the practice of covert action from a convenient strategy to an overused foreign policy tool.⁴⁴¹ Warner found that to be effective, ‘covert action should remain plausibly deniable for a crucial time period, making it akin to wartime operational secrecy for military planners and commanders.’⁴⁴² The less people know about an operation, the better.

Eminent scholars, like Richard J. Aldrich, have studied how clandestine agencies seek to influence the world by unseen means—as if by a ‘hidden hand,’ which, over time, creates a ‘religion of secrecy.’⁴⁴³ But what if some of these clandestine operations are more than just one-sided? This process of secret negotiation between parties who are not officially supposed to be talking is referred to as clandestine diplomacy.⁴⁴⁴ Len Scott, a professor at the University of Aberystwyth, found that intelligence agencies have chosen to engage in clandestine diplomacy as a way to negotiate terms and acquire valuable intelligence without the threat of public scrutiny.⁴⁴⁵

⁴⁴⁰ Loch K. Johnson, ‘Reflections on the Ethics and Effectiveness of America’s Third Option: Covert Action and U.S. Foreign Policy,’ *Intelligence and National Security Journal*, Vol. 35, Issue 5, 16 March 2020: p 669.

⁴⁴¹ William J. Dougherty, *Executive Secrets: Covert Action and the Presidency*, University of Kentucky Press, 2006: pp. 12-32.

⁴⁴² Warner, ‘A Matter of Trust: Covert Action Reconsidered,’ p. 36.

⁴⁴³ Richard J. Aldrich, *The Hidden Hand: Britain, America and Cold War Secret Intelligence*, John Murray, 2001: pp.1-733.

⁴⁴⁴ Warner, ‘A Matter of Trust: Covert Action Reconsidered,’ p. 35.

⁴⁴⁵ Len Scott, ‘Secret Intelligence, Covert Action and Clandestine Diplomacy,’ *Intelligence and National Security Journal*, Vol. 19, No. 2, Summer 2004: pp. 322-341; see also Rory Cormac, *Disrupt and Deny: Spies, Special Forces and the Secret Pursuit of British Foreign Policy*, Oxford University Press, 2018; and Christopher Moran, *Classified: Secrecy and the State in Modern Britain. United Kingdom*, Cambridge University Press, 2013.

The old US adage of ‘never negotiating with terrorists,’ may not be completely true after all. In fact, as later chapters will examine, the US has chosen to covertly negotiate with those whom it has deemed ‘mortal enemies’ for the purposes of negotiating mutually beneficial terms. Soleimani being one of them. However, if such negotiations do not go as planned, or do not favour both sides, they degrade into more traditionally understood forms of unilateral covert operations. Although the lawfulness of such operations rests on shaky ground, the reliance on such strategies still endures.⁴⁴⁶ It is when such operations result in extreme outcomes, like assassination of foreign government officials or the undermining of elections, that this tolerance of covert state activity is once more brought into question.⁴⁴⁷ To avoid these issues, secrecy in statecraft becomes vitally important.

According to Austin Carson, secrecy in government affairs is sometimes beneficial. This view challenges the established perception that ‘secrecy is a plague on peace,’ and instead posits that the curtailment of public knowledge may in fact prevent the dangerous escalation of matters.⁴⁴⁸ Moreover, Carson reasoned that ‘covertness and collusion may help adversaries reach a better understanding’ by eliminating the public, which serves as a third-party observer or critic. Thus, when states choose to participate in overt wars, they signal their intentions and provide the adversary with little option but to engage in the same manner. When launching a covert war, more options exist for the adversary to respond, with clandestine diplomacy being just one example of such.⁴⁴⁹

Still, issues of ethicality and transparency remain a challenge for international law and domestic foreign policy when such diplomatic activities are carried out covertly.⁴⁵⁰ As such, a

⁴⁴⁶ William Michael Reisman et. al., *Regulating Covert Action: Practices, Contexts, and Policies of Covert Coercion Abroad in International and American Law*, Yale University Press, January 1992: pp. 1-250.

⁴⁴⁷ David P. Forsythe, ‘Democracy, War, and Covert Action,’ Special Section on Democracy, War and Peace, *Sage Journals*, November 1992: pp. 385-395.

⁴⁴⁸ Austin Carson, *Secret Wars: Covert Conflicts in International Politics*, Princeton University Press, 2018: p.309.

⁴⁴⁹ Austin Carson, *Secret Wars: Covert Conflicts in International Politics*, Princeton University Press, 2018: pp. 250-325.

⁴⁵⁰ Aharon Klieman, *Statecraft in the Dark: Israel’s Practice of Quiet Diplomacy*, Routledge, 2019: pp. 98-158.

balance must be struck between secrecy and transparency in order for a proper level of oversight and accountability to exist. Otherwise, covert action will degrade the element of domestic accountability which is of paramount importance in democratic societies. Although covert action may be strategically important, it remains nonetheless dangerous. For even authoritarian leaders like Adolf Hitler and Joseph Stalin still ‘exercised a surprising degree of cautions statecraft through the covert sphere.’⁴⁵¹

Covert action can be effective—if used in moderation. This is because the overreliance on policies of concealment, obfuscation, denial and deflection can backfire quickly. The British became particularly skilled at this practice of ‘statecraft by stealth.’ According to Steven B. Wagner, the British intelligence state came about from a series of clandestine operations which resulted in policy-making strategies that struck the perfect balance between transparency and the strategic benefits accrued during covert action. The UK has since ‘devoted considerable attention to intelligence gathering and analyses,’ in addition to regulating the use of secrecy in statecraft.⁴⁵²

Other states have not been so fortunate. The US, for instance, has chosen to expand its policy of secrecy in statecraft without ensuring proper limitations or oversight, and has since suffered significant negative consequences. The Trump presidency also had a proclivity for fabricating intelligence and misconstruing facts, which also served to undermine the accountability of the US government in cases where its covert practices were revealed. Ben Worthy and Marlen Heide discovered that in addition to the ‘lies’ spewed by the Trump White House, there was also an ‘unintentional openness’ which also served to undermine the presidency, and by extension, all covert actions it had authorized.⁴⁵³

This issue was compounded by the fact that the US president held a strong aversion to transparency—both domestically and internationally. In May 2020, President Trump announced that he would withdraw from the ‘Open Skies’ Treaty. This agreement had been established in

⁴⁵¹ Carson, *Secret Wars: Covert Conflicts in International Politics*, p. 250.

⁴⁵² Steven B. Wagner, *Statecraft by Stealth: Secret Intelligence and British Rule in Palestine*, Cornell University Press, 2019: pp. 1-336.

⁴⁵³ Ben Worthy and Marlen Heide, ‘Donald Trump: Openness, Secrets and Lies,’ *Democratic Audit Blog*, 19 February 2019.

2002 with the goal of promoting military transparency in nearly three dozen nations. Yet, in November of 2020, Mike Pompeo announced that the US had formally withdrawn from the treaty. Their alleged reason for doing so was in response to Russia violating the terms of the treaty, a claim which Putin strongly denied.⁴⁵⁴

The increasing reliance on covert action and secrecy in statecraft, necessitates that a system of oversight and appropriate transparency be upheld in order to ensure that the democratic concept of accountability is respected. Without this, state actions can degrade into evermore intrusive, dangerous, unethical and illegal forms. Accordingly, there is a need for greater study on these practices to offer a level of oversight which is, at present, sorely lacking.⁴⁵⁵ The following section will briefly examine how assassination, like secrecy, has also been used as a tool of statecraft.

Assassination as Tool of Statecraft

The deliberate killing of a high-value target(s) is a strategy that has been relied upon for centuries. Though the motivations and methods with which this is achieved changes, the act of assassination still remains the same. In traditional wars, assassination was frowned upon as it was considered a dishonourable way to kill one's adversary, void of courage and integrity. With the advance in military technologies, however, such strategies were reconsidered. What was once deplorable now became strategically vital.

Asa Kasher and Amos Yadlin have written extensively on assassination and preventative killings. In a 2005 article, the authors explored the role that assassination played in the framework of counterterrorism. They found that although ethical principles do not permit assassination to be used as a strategy, the practice can be used as a tool under certain circumstances.⁴⁵⁶ So, the authors reason that assassination as a tool in limited cases can be permitted if sufficient oversight is given,

⁴⁵⁴ Press Statement by Mike Pompeo, 'On the Treaty on Open Skies,' *US Department of Defence*, 21 May 2020: <https://2017-2021.state.gov/on-the-treaty-on-open-skies/index.html>.

⁴⁵⁵ William Walters, *State Secrecy and Security: Refiguring the Covert Imaginary*, Routledge, 2021: pp. 1-190.

⁴⁵⁶ Asa Kasher and Amos Yadlin, 'Assassination and Preventive Killing,' *SAIS Review of International Affairs*, Vol. 25, No. 1, 2005: pp. 41-57.

but its existence as an enduring strategy in the military arsenal of states remains morally objectionable. This is because assassinations are politically risky operations which can result in consequences that have unimaginable global implications.⁴⁵⁷ The assassination of one man, Archduke Franz Ferdinand, provoked the first world war which claimed the lives of around 40 million people.⁴⁵⁸ Hence, the US assassination of the Iranian General Qasem Soleimani could have resulted in a similar fallout. However, the fallout from this strike was quickly eclipsed by the start of a global pandemic.

Could assassination ever be viewed as an ethical tool of statecraft? According to Tamar Meisels and Jeremy Waldron, believe that this question is useless as the practice has already become commonplace. Yet, they do caution against allowing assassination to become a norm as ‘it proliferates quickly,’ especially in operations which already lack proper oversight and accountability. Killing terrorists by drone, the authors argue, can be permissible in cases where no other option exists.⁴⁵⁹ Still, a rather deep line is drawn in the sand when it comes to this reasoning as well. Due to ethical and legal concerns, and perhaps drawn from the cautious tale of the first world war, scholars like Ward Thomas believe that assassinations should remain ‘off limits as a policy option, especially when the target is a national leader.’⁴⁶⁰ Some states recognize the potential dangers associated with assassinating foreign leaders or high-ranking officials, but they do it anyway.

The United States has launched many assassination campaigns since the start of the ‘global war on terror.’ Yet, as Laurie Calhoun has found, there is a general ‘lack of public discourse surrounding drones’ in the US. Ignorance, indifference or gradual desensitization may be to blame as there has yet to be any significant public outcry or protest in response to the sordid details leaked

⁴⁵⁷ Thomas Byron Hunter, ‘Targeted Killing: Self-defense, Pre-emption, and the War on Terrorism,’ *Journal of Strategic Security*, Vol. 2, No. 2, 2009: pp. 1-52.

⁴⁵⁸ Centre européen Robert Schuman, ‘World War I Casualties,’ p. 1-13: <http://www.centre-robert-schuman.org/userfiles/files/REPERES%20-%20module%201-1-1%20-%20explanatory%20notes%20-%20World%20War%20I%20casualties%20-%20EN.pdf>

⁴⁵⁹ Tamar Meisels and Jeremy Waldron, *Debating Targeted Killing: Counterterrorism or Extrajudicial Execution?* Oxford University Press, 2020: pp. 1-282.

⁴⁶⁰ Ward Thomas, ‘Norms and Security: The Case of International Assassination,’ *International Security*, Vol. 25, No.1, Summer 2000: pp.105-133.

on haphazard clandestine assassination operations the US has authorized internationally. Even the strike on Soleimani garnered a few minutes of primetime attention was quickly replaced by coverage of the ‘Megxit’ scandal brewing in the UK. Blessed with the fortune of an uninterested public, the US drone program has turned assassinations by drone into its standard operating procedure.⁴⁶¹ It is no longer just a tool in statecraft. Now, it is the first option considered by those heading the drone program. This is problematic in that an overreliance on assassination violates international law.

Thomas M. McDonnell reasoned that it may be permissible to eliminate known terrorists who find themselves within the boundaries of an established battlefield, or within the territory of a failed state (to avoid the potential of territorial sovereignty infringement). However, the tolerability towards this tool of statecraft should only be granted in extreme cases. Justifying adherence to international law, by arguing abidance to current parameters or declaring that all programs undertaken (including those employing assassination strategies) are necessary and discriminate, is no longer enough. The US has become a master at spinning narratives to suit their interests post-op.⁴⁶²

Claiming adherence to international laws or maintaining that the use of assassination strategies is employed in limited cases of ‘targeted killing’ is therefore no longer credible. The US’s flimsy relationship with the truth, and the subsequent impact on its perceived legitimacy and credibility, will be examined in the following section on the new era of Post-Truth in America.

Post-Truth

In 2016, Oxford Dictionaries named ‘post-truth’ word of the year.⁴⁶³ The timing was quite indicative of the political culture at the time with the policies and practices of the Trump

⁴⁶¹ Laurie Calhoun, *We Kill Because We Can: From Soldiering to Assassination in the Drone Age*, Zed Books Ltd., 2015: pp. 1-416.

⁴⁶² Thomas Michael McDonnell, ‘Sow What You Reap: Using Predator and Reaper Drones to Carry Out Assassinations or Targeted Killings of Suspected Islamic Terrorists,’ *George Washington International Law Review*, Vol. 44, 2012: pp. 243-291.

⁴⁶³ Allison Flood, ‘Post-truth named word of the year by Oxford Dictionaries,’ *The Guardian*, 16 November 2016.

administration having had a significant impact on the whole of political culture. Abetted by the use of social media platforms and perpetuated by the domestic coverage of an engrossed 24-hour news cycle, this dogmatic shift took hold and signified a new era in politics. Although it could be argued that post-truth politics came about as a result of the behaviour of the President Trump and his administration, it undoubtedly had a striking effect beyond the territorial borders of the US. By 2018, most democratic nations had adopted the term, and used it to reference events like the US presidential election and the Brexit referendum.⁴⁶⁴

To provide conceptual clarity on this topic, it is necessary to first present an adequate definition. According to David Roberts, the man who initially coined the term, post-truth politics can be understood as ‘a political culture in which politics (public opinion and media narratives) have become almost entirely disconnected from policy (the substance of legislation).’⁴⁶⁵ These disconnects can be purposefully made to ensure that real truths, ones which might harm existing political or governmental order, are not made public. Or, even if they are, these would be stifled by the mass of information already disseminated in the political arena. In extreme cases, however, post-truth politics can fuel conspiracy theories.⁴⁶⁶

Some scholars have reasoned that post-truth politics, or fake news as it has also been referred to, can be something of a self-fulfilling prophecy. Jonathan Rose found that ‘fake news often tries to reinforce sincerely held beliefs while providing a supplementary narrative that the authorities or the mainstream media do not want you to know about.’ The political climate, one founded on the existence of well-demarcated sides, poses a significant challenge. This, in addition to the ease with which information can be shared online, allows such mistruths to grow at a viral rate.⁴⁶⁷ Stewart Lockie studied the issue and made a rather interesting observation. He posited that

⁴⁶⁴ Jonathan Freedland, ‘Post-Truth Politicians such as Donald Trump and Boris Johnson are No Joke,’ *The Guardian*, 13 May 2016; and Daniel W. Drezner, ‘Why the Post-Truth Political Era Might be Around for a While,’ *The Washington Post*, 16 June 2016.

⁴⁶⁵ David Roberts, ‘Post-Truth Politics,’ *Grist*, 01 April 2010: <https://grist.org/article/2010-03-30-post-truth-politics/>.

⁴⁶⁶ Roy Boston, ‘Humanists and The Rise of Post-Truth America,’ *The Humanist*, 22 December 2015; and Chris Cillizza, ‘Donald Trump’s Post-Truth Campaign and What it Says About the Dismal State of US Politics,’ *The Independent*, 10 May 2016.

⁴⁶⁷ Jonathan Rose, ‘Brexit, Trump and Post-Truth Politics,’ *Journal of Public Integrity*, Vol. 19, Issue 6, 18 April 2017: pp. 555-558.

the content of post-truth claims may not matter as much as previously thought.⁴⁶⁸ Instead, audience opinions may be the most important element in the equation. Thus, he determined that it does not matter

whether the claims of politicians can be proven true. What matters is whether those listening to those claims would like them to be true—truth being judged not by evidence but by consistency with listeners’ existing beliefs and values. Politicians may long have been among the least trusted members of our societies, but the idea of post-truth politics suggests there is an important qualitative difference between the post-truth politician and the spin doctors of yore. The post-truth politician does not simply pick-and-choose among relevant facts, offer questionable interpretations or avoid inconvenient questions. The post-truth politician manufactures his or her own facts. The post-truth politician asserts whatever they believe to be in their own interest, and they continue to press those same claims, regardless of the evidence amassed against them.⁴⁶⁹

There were several circumstances, including the widely publicized Soleimani strike, which challenged the post-truth claims echoed by the Trump administration. However, the public was equally split along partisan lines—with loyalist Republicans firmly touting the views of the president. This blind allegiance was indicative of the post-truth climate. Before the era of Donald Trump, American political parties were far less estranged. News outlets reported stories in similar ways, and politicians, government officials and even the office of the president was scrutinized by those from both side of the aisle when the circumstances called for such.

Yet, the emergence and salience of fake news and post-truth created an environment of uncertainty and suspicion.⁴⁷⁰ As the Trump era progressed, news outlets became evermore

⁴⁶⁸ Stewart Lockie, ‘Post-Truth Politics and the Social Sciences,’ *Environmental Sociology*, Vol. 3, Issue 1, 23 December 2016: pp. 1-5.

⁴⁶⁹ Lockie, ‘Post-Truth Politics and the Social Sciences,’ p. 1.

⁴⁷⁰ See also Ronnie Olesker, ‘The Securitization Dilemma: Legitimacy in Securitization Studies,’ *Critical Studies on Security*, Vol. 6, Issues 3, 25 January 2018: pp. 312-329.

polarized, catering stories to suit the partisan views of its audience. Fox News became a Republican mecca, hosting Trump regularly and facilitating his ability to spin narratives, spread misinformation and perpetuate the post-truth culture. Scholars like Rhys Crilley have argued that the Trump era thus marked an epochal shift ‘from an age of reason and facts to an age of emotion and lies.’⁴⁷¹ But if facts no longer drove the narrative in the political sphere, what did?

According to Jason Hannan, the answer might lie online. The advance in communication technologies, particularly those offered by social media platforms, has driven the dissemination of these post-truths. In the cyber realm, the practice of trolling has only exacerbated the situation. The popularity of trolling has ‘gone mainstream, shaping politics and even legislation.’⁴⁷² As such, greater research and scholarly investigation is necessary to determine how post-truths are formed, circulated and understood.

In 2018, Claudia Aradau and Jef Huysmans published ‘Assembling Credibility: Knowledge, Method and Critique in Times of Post-Truth.’ In the article, the authors explore the critical approaches taken in security studies and the methods and practices used in analyzing post-truth validity. They suggest that the concept of validity needs to be included in analyses in order for ‘critical security studies and international relations to displace epistemic disputes about ‘post-truth’ with transversal practices of knowledge creation, circulation and accreditation.’⁴⁷³

Legitimacy

Post-truths affect more than just public perception. They also impact the legitimacy, or perceived legitimacy, of a state and its affairs. In some cases, corruption, denial and post-truths, can lead to a legitimization crisis which could result in an erosion of legitimacy. Thus, legitimacy becomes an important concept to examine, particularly following the widely publicized Soleimani strike.

⁴⁷¹ Rhys Crilley, ‘International Relations in the Age of Post-Truth Politics,’ *Journal of International Affairs*, Vol. 94, Issue 2, March 2018: pp. 417–425.

⁴⁷² Jason Hannan, ‘Trolling Ourselves to Death? Social Media and Post-Truth Politics,’ *European Journal of Communication*, Vol. 33, Issue 2, 08 March 2018: pp. 214–226

⁴⁷³ Claudia Aradau and Jef Huysmans, ‘Assembling Credibility: Knowledge, Method and Critique in Times of Post-Truth,’ *Security Dialogue*, Vol. 50, Issue 1, 07 September 2018: pp. 40–58.

But what is legitimacy? Since the concept is quite mercurial, there exist debates about every facet of legitimacy—from its definition to its applications and validity.⁴⁷⁴ Yet, in order to develop a solid foundation upon which the following discussion and analysis will be built, a definition of legitimacy must be presented. Chosen for its popularity, scholarly impact and enduring relevance, Peter G. Stillman's definition of the concept of legitimacy will be referenced. Stillman defined legitimacy as 'the compatibility of the results of governmental output with the value patterns of the relevant systems, that is, those affected by these results (especially the value pattern of the society, but also of individuals, groups, and other societies).'⁴⁷⁵ Unfortunately, values and value patterns are malleable and subjective concepts.

It is for this reason that Christopher Thomas believes the concept of legitimacy is misused, under scrutinized and misinterpreted. In an attempt to address the issue, Thomas proposes that there are three forms of legitimacy (social, moral and legal), each with its own challenges, requirements and applications.⁴⁷⁶ Yet, despite the type of legitimacy examined, he argued that each form is comprised of three major components which remain unchanged. These include the object, the subject and the basis. Simply put, Thomas argues that the obfuscation of the concept of legitimacy, regardless of the type, might be attributed to the uncertainty regarding the aforementioned components.⁴⁷⁷ This uncertainty might be due to the 'language games' used throughout the conceptual history of legitimacy. Shane P. Mulligan examined this issue at length within his article on 'The Uses of Legitimacy in International Relations.' He found that although the concept of legitimacy has always been intertwined with politics, it has only recently been closely examined as a critical measure of the health of international relations and foreign policy.⁴⁷⁸

⁴⁷⁴ David Beetham, 'In Defence of Legitimacy,' *Political Science Association*, Vol. 41, Issue 3, 01 September 1993: pp. 488-491.

⁴⁷⁵ Peter G. Stillman, 'The Concept of Legitimacy,' *Journal of the Northeastern Political Science Association*, Vol. 7, No. 1, Autumn 1974.

⁴⁷⁶ See also Jeffrey L. Dunoff, and Mark A. Pollack, *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, Cambridge University Press, 2012: pp. 321-344.

⁴⁷⁷ Christopher A. Thomas, 'The Uses and Abuses of Legitimacy in International Law,' *Oxford Journal of Legal Studies*, Vol. 34, Issue 4, 2014: pp. 729-758.

⁴⁷⁸ Shane P. Mulligan, 'The Uses of Legitimacy in International Relations,' *Millennium Journal of International Studies*, Vol. 34, Issue 2, 01 February 2006: pp. 349-375.

Despite its obvious cruciality in political thought, legitimacy has not been the topic of focus or analysis in international relations literature.⁴⁷⁹

Researchers, like John Fraser, have tried to fill this gap by developing ways to measure the concept of legitimacy in order to make it easier to observe, and therefore study.⁴⁸⁰ But attempting to measure a precarious concept has proven rather difficult. Yet, this still has not deterred scholars like M. Stephen Weatherford from attempting to develop a formal measurement system capable of quantitatively ascertaining the degrees of legitimacy through an identification of certain indicators.⁴⁸¹ Although this research is far from being applicable to the current political climate, it is nonetheless an important step forward. The indicators Weatherford identified, however, do not focus on the important role that the public plays in the concept of legitimacy.

Sarah B. K. von Billerbeck and Birte Julia Gippert arrived at the same conclusion, and thus they decided to investigate what other elements in the legitimacy equation might be missing. In their 2017 article examining the role of legitimacy in conflict, the authors determined that there are three main areas of focus which must be considered in order for legitimacy to be properly assessed. These include a focus on the sources of legitimacy, the targeted audience, and the means by which the purported legitimization is achieved.⁴⁸² The analysis, however, was by no means comprehensive. This is because it did not examine the motivations of states.

There are reasons behind every decision made—especially in politics. Diplomacy is a policy-driven practice, rather than relationship-based, so legitimacy plays an integral role in the process. Without it, the reputation of a state would degrade, negatively affecting its ability to

⁴⁷⁹ Jens Steffek, 'Legitimacy in International Relations: From State Compliance to Citizen Consensus,' in Hurrelmann A., Schneider S., Steffek J. (eds) *Legitimacy in the Age of Global Politics*, Palgrave MacMillan, 2007.

⁴⁸⁰ John Fraser, 'Validating a Measure of National Political Legitimacy,' *American Journal of Political Science*, Vol. 18, No. 1, 1974: pp. 117–134.

⁴⁸¹ M. Stephen Weatherford, 'Measuring Political Legitimacy,' *The American Political Science Review*, Vol. 86, No.1, March 1992: pp. 149-166.

⁴⁸² Sarah B. K. von Billerbeck and Birte Julia Gippert, 'Legitimacy in Conflict: Concepts, Practices, Challenges,' *Journal of Intervention and State Building*, Vol. 11, Issue 3, 07 August 2017: pp. 273-285.

engage in such activities with the same power of authority.⁴⁸³ So, determining the motivations of states to conduct themselves in a legitimate matter becomes an important point to examine. Ian Hurd suggested that there are three main motivators which compel states to follow the rules. He proposed that states are either motivated by coercion, self-interest or the desire to appear legitimate. But he noted that the most important of the three is legitimacy. This is simply due to the fact that legitimacy 'signals the presence of a legitimate authority' within the international system, thus resulting in greater influence, power and respect, all things that states greatly desire.⁴⁸⁴ However, legitimacy must be earned or conferred, not claimed.

Born out of necessity, some scholars have developed conceptual tools to aid in the study of legitimacy in covert action. Loch K. Johnson, for instance, made a rather important contribution to the field. Initially, he was interested in evaluating covert operations, but realized that such an assessment would be ineffectual if the levels of covert action were not first defined and categorized. Johnson proposed that legitimacy depends on a delicate balance between the nature of the threat and a state's response to the perceived danger. So, in order to determine the balance, both legitimacy and covert action must be fully understood. As such, in his article, 'On Drawing a Bright Line for Covert Operations,' Johnson developed a 'ladder of escalation' which categorized a state's strategic intelligence options from 'routine operations' like the sharing of low-level intelligence, to 'extreme options' like the reliance on assassination plots and the pinpointed retaliation of non-combatants.⁴⁸⁵ He reasoned that covert action should only escalate if there is an observable, documented threat to justify such a decision. In the event that the threat is not aligned with the covert action authorized, the balance between the two is thrown off, making legitimacy much more difficult to claim or prove. Thus, states should 'draw a bright line against excessive covert operations.'⁴⁸⁶

⁴⁸³ Jian Wang, 'Managing National Reputation and International Relations in the Global Era: Public Diplomacy Revisited,' *Public Relations Review*, Vol. 32, Issue 2, June 2006: pp. 91-96.

⁴⁸⁴ Ian Hurd, 'Legitimacy and Authority in International Politics,' *Journal of International Organizations*, Vol. 53, Issue 2, Spring 1999: pp. 379-408.

⁴⁸⁵ Loch K. Johnson, 'On Drawing a Bright Line for Covert Operations,' *The American Journal of International Law*, Vol. 86, No. 2, April 1992: pp. 284-309.

⁴⁸⁶ *Ibid*, p. 299.

Still, this ladder of escalation was not the only contribution Johnson made. He also examined the ethical, practical and philosophical issues of evaluating covert ops, once again realizing that this was hindered by the lack of a comprehensive set of guidelines. Fittingly, Johnson also suggested a way to address the issue—by employing a legitimacy checklist, one which he developed, to objectively and comprehensively evaluate covert action. The checklist is comprised on eleven guidelines. They are as follows:

(1) whenever possible, shun covert operations in favor of diplomatic resolution of international disputes; (2) keep covert operations in harmony with publicly stated policy objectives; (3) conduct only those covert operations which, if exposed, would not unduly embarrass the United States; (4) consult with intelligence analysts and other experts, not just covert-action specialists, before proceeding; (5) never bypass established decision procedures, including reporting requirements (which, except in times of acute emergency, ought to be prospective, not merely retrospective); (6) never violate the laws of the United States (short of the rare Lincoln-esque need to save the nation in a time of desperation); (7) against fellow democracies eschew all but the most routine covert operations; (8) even against nondemocratic regimes, remain at the lower, less-intrusive end of the escalation ladder, applying the just war rule of proportionality and rising upward only in despair; (9) reject arrangements for information sharing or other intelligence activities with any nation practicing, or allowing within its territory, a consistent pattern of gross violations of internationally recognized human rights; (10) in almost all cases, reject secret wars, coups d'etat and other extreme measures, for if America's interests are so jeopardized as to require major forceful intervention, properly authorized overt warfare—ideally, multinational in nature and at the invitation of a legitimate government or faction—is a more appropriate and honorable option; (11) in considering covert operations, always remember above all the importance to the United States of its longstanding tradition of fair play.⁴⁸⁷

⁴⁸⁷ Ibid, p. 305.

Although Johnson's checklist was certainly detailed, its applicability inevitably weakened with the passing of time. It is for this reason why this checklist was insufficient for the purposes of this project, thus necessitating a new theoretical framework capable of better addressing the research objectives set forth in this dissertation. For instance, Johnson argued that a state could only use covert action in preemptive self-defence for threats of genocide and weapons of mass destruction.⁴⁸⁸ So where might the Soleimani strike fit it? Would the omission of threats alternative threats, like terrorism, mean that they cannot be legitimate reasons to act in self-defence? Johnson developed his checklist 28 years before the Soleimani strike. It can be reasonably assumed that there were some things the author did not consider or even imagined, and thus the need for a new legitimacy checklist arose.

The theoretical framework developed for this project differed from Johnson's in a number of ways. For brevity, only three main differences will be briefly noted here. First, it took a broader focus on threats which might permit pre-emptive state action. Post-9/11, the threat of terrorism became an unrelenting fear for states, which permitted greater flexibility in previously rigid military policies, with the purpose of thwarting plots and preventing extremist violence. Second, it took a multidisciplinary approach, by including conditions proposed by international law, scholars, and even military doctrine. And third, it focused on covert operations reliant on unmanned aerial vehicles, and considered the ethical, strategic and legal consequences of such.

Yet, even though Johnson's legitimacy checklist was not as applicable in 2020 as it was in 1992, several of his observations are still very much applicable today. In particular, he posited that the 'excessive use of highly intrusive intelligence options has done much to discredit the West, making its secret services sometimes seem little different from that of its erstwhile enem[ies].'⁴⁸⁹ Fast forward nearly two decades, and this observation still holds—even if the weapons used, strategies employed, and threats feared are markedly different. Yet, even despite its limitations, Johnson's article is still considered a seminal text for its theoretical contributions and original suggestions for further research—all of which paved the way for further scholarship on the topic.

⁴⁸⁸ Ibid, p. 303.

⁴⁸⁹ Ibid, p. 309; see also John Prados, *Presidents' Secret Wars: CIA and Pentagon Covert Operations Since World War II*, William Morrow and Company, 1986.

Hardly a year since Johnson published his seminal text, yet another important scholar sought to examine whether ‘Covert Action Can Be Just.’ This article was originally intended to remain in private circulation within the CIA, but it was later deemed too theoretically important to conceal its findings. The author was James A. Barry, the Deputy Director of the CIA’s Center for the Study of Intelligence, whose position had undoubtedly contributed to his long-held belief that covert action was an unparalleled strategic tool for US intelligence agencies.

Despite his support for the covert action, he was nonetheless concerned with the increasingly unethical and unlawful activities being authorized during such operations. As such, his article employed Just War Theory, the Doolittle Report, and key lessons learned from intelligence operations during the 1960s-1970s, to propose a different intelligence approach for the 1990s. Barry argued that

The United States would be well-served by establishing a policy process modeled after the just-war criteria. To do this, the current procedures should be revised so that, at each stage in the covert action approval process, difficult questions are asked about the objectives, methods, and management of a proposed operation. It is equally important that they be answered in detail, with rigor, and in writing—even (perhaps especially) when time is of the essence. Covert operators are reluctant to commit sensitive details to paper, but this is essential if the United States is to meet high standards of accountability when the easy rationalization of fighting [terrorism] is no longer available.⁴⁹⁰

Accountability must be an internal motivator, a goal which is set, regulated and achieved by the intelligence agency authorizing the covert action(s). There already exists a standard set of seven prerequisites which the CIA is supposed to be following. The Covert Action Review Group, which provides internal oversight on the CIA’s covert operations, requires that these be investigated during the initial approval process, before approval can be granted. These prerequisites include

⁴⁹⁰ James A. Barry, ‘Covert Action Can Be Just,’ *Orbis*, Vol. 37, Issue 3, 1993: p. 386.

proof of just cause, just intervention, proper authority, last resort, probability of success, proportionality, and discrimination and control.⁴⁹¹

Proof is the operative word. According to Barry, the days of covert action being based on ‘sweeping generalities’ should have ceased with the end of the cold war. Subsequently, covert actions abroad should have also decreased, and those which were approved, would need to be approved on a case-to-case basis using rigorous standards of justification. To ensure this, Barry suggested ‘adopting a covert action management system... [that] would move the process substantially in this direction.’⁴⁹² Even if this system is not effective, meaning that it does not stop unethical or illegal activities during covert operations, reform is still important because it would ‘signal that the United States is concerned—even in secret activities—with issues of right and wrong and not merely with power.’⁴⁹³ It would promote openness and accountability and underscore that we firmly reject the repugnant philosophy of the Doolittle Report.’⁴⁹⁴

This is because perception matters. Not just for legality and ethicality, but also for legitimacy. For how could a state claim to be legitimate without demonstrating adherence to a defined set of ethical standards of operation? Barry’s article addressed many of the shortcomings in Johnson’s publication, but it still did not focus on the use of drones in covert actions, and how the nature of the weapon might impact the perceived legitimacy of the operation as a whole. This gap in the scholarship was only just addressed in 2016.

Larry Lewis and Diane M. Vavrichuk published an article with the objective of ‘Rethinking the Drone War,’ but more precisely, its role in national security, legitimacy and the greater US counterterrorism program. They began by outlining the differences between the legal and doctrinal

⁴⁹¹ Ibid, pp. 386-388.

⁴⁹² Ibid, p. 389.

⁴⁹³ See also Lincoln P. Bloomfield Jr., ‘The Legitimacy of Covert Action: Sorting Out the Moral Responsibilities,’ *International Journal of Intelligence and Counterintelligence*, Vol. 4, Issue 4, 1990: pp. 525: ‘The key question, then, is not whether the United States should have the capability, but how to ensure that the Executive Branch executes covert actions in a manner consistent with the Constitution. An important part of the answer lies in the constitutional role played by Congress in exercising its proper oversight functions. A lack of oversight can weaken the process of good government; so can an excess of that oversight.’

⁴⁹⁴ Ibid, 390.

definitions of covert actions.⁴⁹⁵ This distinction is an important one to make, especially when trying to determine when and how constraints should be placed on covert actions. Then then made recommendations on how to reform existing international norms to make them better able at addressing current US practices (including a focus on remote weaponry).⁴⁹⁶ These proposals were suggested with the intention of making existing institutions within the US, including its intelligence agencies, more accountable to IHL.⁴⁹⁷

Building off of the conclusions made in Barry's article, Lewis and Vavrichek then engage in a lengthy dialogue regarding the need for the CIA to ensure that its covert actions abide by IHL rules, norms, laws and guidelines. Whether this means including relevant IHL doctrine among the prerequisites of the Covert Action Review Group, was not specified. However, the authors did note that agencies, like the CIA, must commit to conducting independent reviews to ensure that its covert operations abide by international law. In doing so, it demonstrates a level of accountability, which as Barry and Johnson suggested before, will improve 'the legitimacy of the United States and its partners... [which] provide a path for improving long-term national security and international stability.'⁴⁹⁸

In cases of questionable state actions, there is perhaps an even greater need to fully convince the public of the necessity of the action undertaken—thus attaining legitimacy.⁴⁹⁹ It is similarly important to recognize that making noise in the political arena does not result in legitimacy. This becomes especially true in the case of the Trump administration which attempted to obfuscate the legality of the Soleimani strike by offering more lies rather than evidence. These practices have undoubtedly contributed to the normative turn in foreign policy, a phenomenon which will be examined more closely in the following section.

Normative Turn in Foreign Policy

⁴⁹⁵ Larry Lewis and Diane Vavrichek, 'Rethinking the Drone War,' *Marine Corps University Press*, 2016: p. 217.

⁴⁹⁶ Ibid, p. 206.

⁴⁹⁷ Ibid, p. 203.

⁴⁹⁸ Ibid, p. 207.

⁴⁹⁹ See Michael Hechter, 'Legitimacy in the Modern World,' *American Behavioural Scientist*, Vol. 53, Issue 3, 12 October 2009: pp. 279-288.

Since 2014, there have been several important works published by scholars regarding the role narratives play in international relations and foreign policy. These will be briefly introduced and discussed to determine how the narrative turn came about, what role it played after the Soleimani strike, and how this affected the perceived legitimacy of the US government.

Jelena Subotić, a political science professor at Georgia State University, researched the role that narratives play in security and foreign policy change. She revealed that narratives could have the power to change state policy, rather than merely influence its course. During times of great turmoil or crisis, Subotić posited that threats would selectively activate certain narratives to ‘provide a cognitive bridge between policy change that resolves the physical security challenge, while also preserving state ontological security through offering autobiographical continuity, a sense of routine, familiarity, and calm.’⁵⁰⁰ This means that narratives can become dominant at different times, depending on the circumstances affecting a state.

Ronald Krebs, a professor at the University of Minnesota, confirmed Subotić’s conclusions. Yet, he went one step further, claiming that narratives might be able to change more than just foreign policy. If there exists a high degree of consensus, dominant narratives, like those regarding the War on Terror, could shape national security policy and even international law.⁵⁰¹ This is because discourse consensus, according to Krebs, creates strong narratives. If this consensus weakens, then the narrative will collapse. There is, however, an interesting irony to this relationship. Krebs found that following military victories, narratives tend to weaken or fall as there exists free time for reflection, criticism and self-improvement.⁵⁰² The reverse is true following military defeats. So, if discourse has a considerable impact on narratives, which in turn directly influence or change foreign policy and security, then it might serve as an effective means of analysis.

⁵⁰⁰ Jelena Subotić, ‘Narrative, Ontological Security, and Foreign Policy Change,’ *Foreign Policy Analysis*, Volume 12, Issue 4, October 2016: pp. 610–627.

⁵⁰¹ Ronald Krebs, *Narrative and the Making of US National Security*, Cambridge University Press, 2015.

⁵⁰² Ronald Krebs, ‘How Dominant Narratives Rise and Fall: Military Conflict, Politics, and the Cold War Consensus,’ *International Organization*, Vol. 64, Issue 4, Fall 2015: pp. 809-845.

Kai Oppermann and Alexander Spencer sought to determine what effect narrative constructions have on foreign policy, particularly during events branded as ‘fiascos.’ They found that discourse could serve as an analytical method capable of measuring the social construction of policy fiascos.⁵⁰³ But they were not alone in this observation. Around the same time, Carina van de Wetering was researching US-India relations in the post-Cold War period. Despite having a different focus on analysis due to the case study she was examining, she likewise concluded that discourse influences established security policies and foreign relations.

Underlying discourse, van de Wetering argued, may explain why US foreign policy is constrained or loosened depending on the relationship between the states in question.⁵⁰⁴ Yet, discourse may not be the only reason behind this change. Kathrin Bachleitner, a foreign policy researcher, posited that collective memory might also play a critical role in state behaviour.⁵⁰⁵ Thus, diplomacy may be conducted with ‘memory.’ She cited how countries with a shared traumatic past, especially those who may have been adversaries in conflict, might conduct their diplomatic affairs from a more guarded position.⁵⁰⁶

So, collective memory influences discourse which forms narratives that have the power to change policy. The narrative turn occurred when discourse is manipulated by governments or their elected officials to change the narrative to permit or justify their actions, often after the fact. Following the Soleimani strike, US President Trump used his position of power, and the unavailability of intelligence to ‘spin’ the discourse in his favour—thus creating a narrative that deviated from the truth and resulted in mounting suspicion which had a negative impact on the perceived legitimacy of the US, its counterterror operation, and the mission it authorized against

⁵⁰³ Kai Oppermann and Alexander Spencer. ‘Telling Stories of Failure: Narrative Constructions of Foreign Policy Fiascos,’ *Journal of European Public Policy*, Vol. 23, Issue 5, 18 January 2016: pp. 685-701.

⁵⁰⁴ Carina van de Wetering, *Changing US Foreign Policy Toward India*, New York: Palgrave Macmillan, 2016.

⁵⁰⁵ Kathrin Bachleitner, *Collective Memory in International Relations*, Oxford University Press, 2021: pp. 1-176.

⁵⁰⁶ Kathrin Bachleitner, ‘Diplomacy with Memory: How the Past Is Employed for Future Foreign Policy,’ *Foreign Policy Analysis*, Vol. 15, Issue 4, October 2019: pp. 492-508.

the Iranian General. This will be examined in greater detail during later chapters, but it is important to note that a manipulation of discourse might change the narrative—but it will also weaken the legitimacy of those responsible. The following chapter will examine past counterterror operations to better understand where this shift in narrative occurred.

The Failed Fadlallah Assassination

Decision-makers often draw on the recent past when developing both policy and strategy. They use analogies to inform their reasoning. In short, lessons are often drawn from past experiences to help cope with difficult choices. Using more technical language, social psychologists would say that such policy learning implies that schemas will be recalled to explain the phenomenon in question. In other words, decisions will be based on target-oriented, history-dependent routines. To better understand the current state of affairs, it is, therefore, worth examining the recent past, from the inception of the US preemptive counter-terror assassination programme to its first operational gaffe.⁵⁰⁷

In 1984, the Reagan administration established the National Security Decision Directives (NSDD)-138, which set the groundwork for the CIA's preemptive counterterrorism program.⁵⁰⁸ According to Ambassador Robert B. Oakley, the US State Department Coordinator for Counterterrorism from 1984-86, was Lt. Col. Oliver North. He, along with National Security Advisor Robert C. McFarlane, Rear Admiral John Poindexter, and the Director of Central Intelligence, William J. Casey, was largely responsible for the foundation and development of the preemption program.⁵⁰⁹

⁵⁰⁷ Dan Reiter, 'Learning, Realism, and Alliances: The Weight of the Shadow of the Past,' *World Politics*, Vol.46, No.4 (1993), p. 490.

⁵⁰⁸ James Larry Taulbee, 'Retaliation, Deterrence, Terrorism and the Regan Administration,' *Defence Analysis*, Vol. 4 (1985), pp. 281-283; Bob Woodward, *Veil: The CIA Secret Wars, 1981-87* (New York: Simon and Schuster, 1987) p. 362; Bob Woodward and Charles R. Babcock, 'Antiterrorist Plan Rescinded After Unauthorized Bombing,' *The Washington Post*, 12 May 1985, p. A-26; see also Uri Fisher, 'Deterrence, Terrorism, and American Values,' *Homeland Security Affairs* 3.1 (2007); Bruno S. Frey and Simon Luechinger, 'How to Fight Terrorism: Alternatives to Deterrence,' *Defence and Peace Economics* Vol.14, No.4 (2003), pp. 237-249; Todd Sandler and Kevin Siqueira, 'Global Terrorism: Deterrence Versus Pre-Emption,' *Canadian Journal of Economics/Revue Canadienne D'économique* Vol.39, No.4 (2006), pp. 1370-1387; and Javier Argomaniz and Alberto Vidal-Diez, 'Examining Deterrence and Backlash Effects in Counter-Terrorism: The Case of Eta,' *Terrorism and Political Violence* Vol.27, No.1 (2015), pp. 160-181.

⁵⁰⁹ Richard J. Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' *Strategic Studies Institute* (Carlisle: US Army War College, 2012), p. 308.

In Lebanon, the US preemptive attack programme hoped to ensure stability in the region while addressing Islamic revivalist-extremists' terrorist assaults in the Middle East against US interests.⁵¹⁰ Before the creation of the US preemptive counterterror programme in 1984, Hezbollah (under the guise of the Islamic Jihad Organization) planned and executed several provocative abductions of Americans during the early 1980s. The abductions most notably included Professor David Dodge, the interim President of the American University of Beirut (AUB), taken hostage on July 19, 1982; the January 1984 murder of Professor Malcolm Kerr, President of the American University of Beirut; the February 1984 abduction of Dr Frank Regier, an AUB Professor of Electrical Engineering; the abduction of Reverend Benjamin Weir and Jeffrey Levin of CNN in March 1984; and the abduction of Father Lawrence Jenco in January 1985.⁵¹¹

However, the last straw came with the abduction, torture, and eventual murder of CIA Bureau Station Chief William Buckley in March 1984. According to Prof. Richard J. Chasdi from the University of Windsor, it was this watershed moment that 'may have had the most profound and lasting implications for the US policy in Lebanon.'⁵¹² Hezbollah sent videotapes of Buckley under interrogation to the CIA station in Athens. Spurred on by William Casey, a personal friend of Buckley, the CIA began hunting Hezbollah and its spiritual leader, Fadlallah.⁵¹³ So, on March 8th, 1985, Ayatollah Mohammed Hussayn Fadlallah, the 'spiritual leader' of Hezbollah, was marked for death by the CIA and Mossad. However, due to a lack of bureaucratic consensus,

⁵¹⁰ Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 324.

⁵¹¹ Robert Baer, *See No Evil: The True Story of a Ground Soldier in the CIA's War on Terrorism*, (New York: Crown Press, 2002), pp. 74, 79, 100-1; R. Norton, *Hezbollah: A Short History* (Princeton, NJ: Princeton University Press, 2007), p. 74; William Claiborne, 'Shiite Group Issues New Threat,' *Washington Post*, 23 December 1983, p. 20; Philip Taubman, 'Shiite Group Tied to Beirut Blasts,' *The New York Times*, 31 January 1984, p. 4.

⁵¹² Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 326; see also Baer, *See No Evil: The True Story of a Ground Soldier in the CIA's War on Terrorism*, pp. 73-74, 77, 79; Woodward, *Veil*, p. 395; John Prados, *President's Secret Wars: CIA and Pentagon Covert Operations From World War II Through the Persian Gulf* (Chicago, IL: Elephant Paperbacks, 1996), pp. 379; Ambassador Robert B. Oakley, Distinguished Research Fellow, Institute for National Strategic Studies, National Defence University, Interviewed by Richard J. Chasdi, 25 June 2008; see also Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 326.

⁵¹³ Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 326.

particularly amongst those at the White House and across several national security agencies, the plan to kill Fadlallah was not adequately prepared, considered or communicated.⁵¹⁴

Scholars believe this lack of planning, coupled with a misunderstanding of the Lebanese political landscape and an inability to address the Hezbollah movement, negatively affected the mission effectivity. Furthermore, the absence of a strong National Security Advisor, and a lack of consensus found in the upper levels of foreign policy advisors in the executive branch, also contributed to the overall confusion about Middle East policy and raised questions concerning the counterterror program's competency. Many in the Middle East viewed the Fadlallah attack as the US pursuing its interests by force. Administrative inadequacies, particularly in the US National Intelligence Officer (NIO) organization, prevented analyses from being considered in Fadlallah's policy recommendations. In the absence of such, extreme and risky options were furthered under the guise of counterterror strategies. Since 'there was no proactive effort to gauge Fadlallah's day-to-day involvement with Hezbollah's operational side, [it] led American officials to focus... [its] attention on Fadlallah rather than on chief tacticians such as Iman Mughniyeh and Hussayn al-Musawi.'⁵¹⁵

It should be noted that, at the time, US foreign policy in Lebanon was primarily *ad hoc* in nature. The Reagan administration had a list of incomplete objectives that conflicted with Lebanon's political climate.⁵¹⁶ This incompatibility served as the first reason why the foreign policy in the region was largely unplanned.⁵¹⁷ The second reason pointed to competitive and

⁵¹⁴ Ben Bradlee, *A Good Life* (New York: Simon and Schuster, 1996); Woodward, *Veil*.

⁵¹⁵ Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' pp. 308-351 (Chasdi noted that '[t]he attack against Fadlallah amplified feelings among Middle Easterners that Americans were not only taking sides in an ostensibly peacekeeping role, but that American national interests in Lebanon were pursued at the expense of Shia political stakeholders with time-honored and legitimate demands, aspirations, and grievances. The attack against Fadlallah amplified feelings among Middle Easterners that Americans were not only taking sides in an ostensibly peacekeeping role, but that American national interests in Lebanon were pursued at the expense of Shia political stakeholders with time-honored and legitimate demands, aspirations, and grievances.)

⁵¹⁶ Ibid, pp. 306-309.

⁵¹⁷ Michael J. Mazarr, *Leap of Faith: Hubris, Negligence, and America's Greatest Foreign Policy Tragedy* (New York: Public Affairs Publishing, 2019); see also Wyn Q. Bowen, 'Deterrence and Asymmetry: Non-State Actors and Mass Casualty Terrorism,' *Contemporary Security*

corrosive bureaucratic politics within the United States, particularly the lack of a robust National Security Advisor. Consequently, it was bureaucratic politics that served as the biggest challenge in this mission. Suffice it to say, the plan to kill Fadlallah failed. Although Fadlallah escaped unharmed, the car bomb used injured over 200 civilians and killed more than 80 in the Bir al-Abd quarter of Beirut, Lebanon. Orchestrated by the CIA under its newly-established preemption program, this botched assassination further tarnished the American reputation in Lebanon, which fanned the flames of anti-Western sentiments that facilitated the recruitment and radicalization of new members within Hezbollah's ranks.

This unsuccessful assassination plot marked the initial mistake in the CIA's counterterrorism operations against Hezbollah. Thus, it is a worthwhile episode to discuss for several reasons. First, the fallout, which can result from preemptive counterterrorism activities, is quite apparent in this case. Although international law affords, under strict conditions, the ability to engage in anticipatory self-defence operations, it does not require any risk calculation to be made pre-strike. Even if such an evaluation were required by international law, without any supranational oversight, this could be easily and subjectively altered by states in their interest to allow similar strikes to proceed. Consequently, the fallout, or the potential of destructive consequences from preemptive counterterrorism activities, is generally unpredictable. At a functional level, the failed assassination attempt on Fadlallah demonstrates quite clearly what could go wrong as a result of such activities.⁵¹⁸ Civilian casualties, property damage, increased recruitment and radicalization, target escape, and regional apathy towards Western involvement are just a few such costs.

Second, the Fadlallah attempt also illustrates how disagreement within the US government regarding the use of preemptive strike in counterterrorism operations 'can reduce its overall legitimacy, and thereby, in effect, facilitate vacillation and hesitancy in the policy's

Policy Vol.25, No.1 (2004), pp. 54-70; Andreas Wenger and Alex Wilner, *Detering Terrorism: Theory and Practice* (Stanford: Stanford University Press, 2012); Alex Wilner, 'The Dark Side of Extended Deterrence: Thinking Through the State Sponsorship of Terrorism,' *Journal of Strategic Studies* Vol.41, No.3, (2018), pp. 410-437; and Adam Lowther, *Deterrence: Rising Powers, Rogue Regimes, and Terrorism in the Twenty-first Century* (Berlin: Springer, 2012).

⁵¹⁸ Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' pp. 303-304.

implementation.’⁵¹⁹ Unwilling to wait for final US approval, ‘local operatives who were recruited for the programme apparently became restless and attempted to independently carry out the mission.’⁵²⁰ And third, the tensions and competition between US agencies resulted in a toxic bureaucratic environment. As Graham Allison, a Professor of Government at Harvard Kennedy School noted, the effects of this competitive environment resulted in a ‘pulling and hauling’ dynamic wherein the US Department of Defence, the Department of State, the Executive Branch and the CIA disagreed about how to approach the threat posed by Hezbollah, and by association, Fadrallah.⁵²¹ Flawed US assumptions about Lebanese politics compounded by naïve expectations of their relationship with the Lebanese authorities ‘contributed to a lack of cogent policy direction in Lebanon, which was ultimately reflected in the Fadrallah assassination attempt.’⁵²² It also stands to reason that an examination of the Fadrallah ‘assassination attempt and the organizational dynamics which underpinned it, deserve a careful review because similar dynamics could influence more contemporary counterterror choices.’⁵²³ Therefore, to understand the long shadow of the past and avoid the same consequences of the Fadrallah attempt, it becomes imperative to examine the Fadrallah case to learn from its setbacks.⁵²⁴

Distinguished American scholars, like Boaz Ganor, Martha Crenshaw, Roger N. McDermott, J. Paul de Taillon, Paul R. Pillar, Ian O. Lesser, Robert Kupperman and Jeff Kamen

⁵¹⁹ Ibid, p. 304; see also Frederic S. Pearson and Martin J. Rochester, *International Relations: The Global Condition in the Twenty First Century*, 4th Edition, (New York: The McGraw Hill, 1998); Charles Lindblom, *The Policy Making Process*, 2nd Edition, (Englewood Cliffs, NJ: Prentice Hall, 1980).

⁵²⁰ Oakley interview by Richard J. Chasdi, 25 June 2008; see also Chasdi, ‘Counterterror Failure: The Fadrallah Assassination Attempt,’ p. 308.

⁵²¹ Graham T. Allison, *Essence of Decision-making: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971), pp. 83, 162-181; Robert J. Art, ‘Bureaucratic Politics and American Foreign Policy: A Critique,’ *Policy Sciences*, Vol. 4 (1973), pp. 467-487.

⁵²² Chasdi, ‘Counterterror Failure: The Fadrallah Assassination Attempt,’ p. 304.

⁵²³ Chasdi, ‘Counterterror Failure: The Fadrallah Assassination Attempt,’ p. 304.

⁵²⁴ Even with decades of experience behind them, the CIA’s counterterrorism policy of preemption is still ineffective. Rather than operating by carefully crafted counterterrorism policies, the program, as Chasdi [Ibid] notes, ‘revolved around reactive counterterror practices with an almost singular focus on hard-line actions to confront Islamic revivalist-extremist terrorist assaults...[this] approach [is] therefore destined for abject failure.’ This ‘react first, reason later’ mentality behind CIA counterterror policies has resulted in the negative consequences seen in the Fadrallah case discussed herein.

have each independently determined that in the absence of (i) clear foreign policy objectives, (ii) basic consideration for international laws, and (iii) a relative level of domestic consensus within and among government agencies, CIA-led US counterterror operations will continue to beget consequences like those experienced during the Fadlallah stratagems.⁵²⁵

The United States suffered numerous problems as a result of its involvement in the botched Fadlallah assassination. As mentioned earlier, the US reputation in Lebanon and the greater Middle East was tarnished. According to James Larry Taulbee, a Political Science Professor at Emory University, at the time, many people were angered by the variable nature of US foreign policy.⁵²⁶ But reputations and sentiments were not the only casualties. Following the Fadlallah affair, anger towards the US incited many to participate in attacks and terroristic activities directed at the United States and its interests. For instance, shortly after the failed Fadlallah operation, kidnappings resumed with the abduction of American journalist Terry Anderson on March 16, 1985.⁵²⁷ A day later, two British citizens, Gordon Nash and Brian Levick were kidnapped after being mistaken for Americans.⁵²⁸ Two months later, an attempt was made on the life of the Emir of Kuwait.⁵²⁹ A month after that, Trans World Airlines Flight 847 was hijacked.⁵³⁰

⁵²⁵ See Boaz Ganor, *The Counter-terrorism Puzzle* (New Brunswick, NJ: Transaction Books, 2005), p. 41; Martha Crenshaw, 'Terrorism, Strategies and Grand Strategies,' in Russell D. Howard, Reid L. Sawyer, and Natasha E. Bajema, eds., *Terrorism and Counter-terrorism: Understanding the New Security Environment, Readings and Interpretations*, 3rd ed., (New York: McGraw Hill, 2004), pp. 444-459; Roger N. McDermott, *Countering Global Terrorism: Developing The Anti-Terrorist Capabilities on Central Asian Militaries* (Carlisle, PA: Strategic Studies Institute, US Army War College, 2004), pp. 7-8; J. Paul de Taillon, *Hijacking and Hostages: Government Response to Terrorism* (Westport, CT: Praeger, 2002), p. 78; Paul R. Pillar, *Terrorism and US Foreign Policy* (Washington, DC: Brookings Institution Press, 2001) p. 28; Ian O. Lesser, 'Countering the New Terrorism: Implications for Strategy,' in *Countering the New Terrorism* (Santa Monica, CA: Rand Corporation, 1999), p. 126; Robert Kupperman and Jeff Kamen, *Final Warning: Averting Disaster in the New Age of Terrorism* (New York: Doubleday, 1989), pp. 121-122.

⁵²⁶ Taulbee, 'Retaliation, Deterrence, Terrorism and the Regan Administration,' pp. 281-283, 381.

⁵²⁷ Christopher Callahan, 'When a Journalist is Kidnapped,' *American Journalism Review*, Vol.16, No.7 (1994), pp. 36-43.

⁵²⁸ Edgar O'Ballance, 'The Western Hostage Saga, 1984-92,' in *Islamic Fundamentalist Terrorism, 1979-95* (London: Palgrave Macmillan, 1997), pp. 99-124.

⁵²⁹ Masoud Kazemzadeh and Gabriel Emile Eid, 'An Analysis of the Assassination of the Lebanese Hezbollah Commander Imad Mughniyeh: Hypotheses and Consequences,' *Journal of American Foreign Policy Interests*, Vol. 30, Issue 6 (2008), pp. 399-413.

⁵³⁰ Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 310.

Those enraged by the various actions and counter-actions (the exact chain is not always clear even to those on the ground) resorted to fighting fire with fire. Or, in this case, terror with terror. Under the direction of William J. Casey, the CIA's preemptive counterterrorism programme began less than a month after Hezbollah attacked the US Embassy in Beirut in 1984.⁵³¹ As Ambassador Oakley recalled, 'after the Marine barracks and then the American embassy had been blown up [in 1983], there was a very strong feeling in Washington; we cannot just sit back and wait for them to do it again.'⁵³² Caspar W. Weinberger, the then US Secretary of Defence, was quite adamant in his belief that the United States should not, by any means (covert or otherwise), participate in assassination or leadership decapitation strategies targeting terrorist leaders or known affiliates.⁵³³

Weinberger's senior aide was General Colin Powell, who similarly voiced his disapproval concerning the US' plan to assassinate Fadlallah.⁵³⁴ Aligned with Weinberger and Powell was Deputy Director of Central Intelligence John N. McMahon, who was similarly concerned with the strategy. They worried that in killing Fadlallah, they would be violating Executive Order (EO) 12333, which prohibits assassinations.⁵³⁵ On the other hand, the Director of Central Intelligence, William J. Casey, and the CIA General Counsel Stanley Sporkin stood in complete disagreement with Weinberger and McMahon.⁵³⁶ Both strongly advocated for the use of assassination strategies

⁵³¹ Woodward, *Veil*, pp. 393-394; Prados, *President's Secret Wars*, pp.379-380; Woodward and Babcock, 1985, p. A-25; David B. Ottaway, 'Conclusive Proof of Terrorist Acts by Car-Bomb Target Is Not Evident,' *The Washington Post*, 17 May 1985, p. A-31; also see Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 315.

⁵³² Oakley interview by Richard J. Chasdi, 25 June 2008.

⁵³³ David Kennedy and Leslie Brunetta, 'A Case Study: Lebanon and the Intelligence Community,' *Studies in Intelligence*, Vol. 37, No.5 (1994), pp. 42-45; Jerel A. Rosati, *The Politics of United States Foreign Policy* (Orlando, FL: Harcourt Brace and Company, 1993), p. 168.

⁵³⁴ Jonathan M. Fredman, 'Covert Action, Loss of Life, and Prohibition on Assassination,' *Studies in Intelligence* No.1 (1997), p. 23.

⁵³⁵ Baer, *See No Evil: The True Story of a Ground Soldier in the CIA's War on Terrorism*, p. 91; Fredman, *Covert Action*, pp. 15-25; Colonel W. Hays Parks, *Memorandum of Law*, DAJA-1A (27-1A) Washington, DC: Department of the Army, Office of the Judge Advocate General of the Army, 02 November 1989; see also Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 311.

⁵³⁶ Woodward, *Veil*, pp. 393-394; see also Douglas Little, 'Mission Impossible: The CIA and the Cult of Covert Action in the Middle East,' *Diplomatic History* Vol.28, No.5, (2004), pp. 663-701;

in counterterrorism operations by finding their legal and moral justifications within the international customary law of anticipatory self-defence and Article 51 of the UN Charter.

Jonathan M. Fredman, a lawyer, professor and former chief counsel to the Director of Central Intelligence Counterterrorist Center, posited that the confusion around the parameters of EO 12333 could be simply disregarded. President Carter's attempt to make the Executive Order stricter by removing the requirement of the term 'political' from the boundaries for assassination, which was later continued by Reagan, 'does not apply in this type of situation,' Fredman claimed. Terrorists do not follow the laws of war and should not be considered within the Executive Order. Fredman concluded that many covert actions appropriately might be compared to military operations, and in those cases, 'the law of war supplies the terms of reference.'⁵³⁷

Legally and objectively speaking, the Fadlallah assassination attempt was unlawful. Consequently, the US is demonstrably culpable for its participation, especially in providing training and the supply of technology in this operation. Even if Mossad or its Lebanese outriders ultimately carried out the attack, it was planned and strategized within the CIA's counterterror program—which is technically under US management.⁵³⁸ The fact that the attack was executed in

Harry Rositzke, *The CIA's Secret Operations: Espionage, Counterespionage, and Covert Action*, (London: Routledge, 2019); Tim Weiner, *Legacy of Ashes: The History of the CIA* (New York: Anchor, 2008); Jennifer D. Kibbe, 'Covert Action and The Pentagon,' *Intelligence and National Security* Vol.22, No.1, (2007), pp. 57-74; Jonathan Marshall, Peter Dale Scott, and Jane Hunter, *The Iran-Contra Connection: Secret Teams and Covert Operations in the Reagan Era*, Vol. 120 (London: Black Rose Books, 1987); and Todd Stiefler, 'CIA's Leadership and Major Covert Operations: Rogue Elephants or Risk-Averse Bureaucrats?' *Intelligence & National Security* Vol.19, No.4, (2004), pp. 632-654.

⁵³⁷ Fredman, *Covert Action*, pp. 19-23; see also Arthur S. Hulnick, 'US Covert Action: Does It Have A Future?' *International Journal of Intelligence and Counter-Intelligence* Vol.9, No.2, (1996), pp. 145-157; Matthew S. Pape, 'Constitutional Covert Operations: A Force Multiplier for Preemption,' *Military Review* Vol.84, No.2, (2004), p. 52; Stephen J. Cox, 'Confronting Threats Through Unconventional Means: Offensive Information Warfare as A Covert Alternative to Preemptive War,' *Houston Law Review* Vol.42, (2005), p. 881; and Duane Robert Worley, *Waging Ancient War: Limits on Preemptive Force*, Strategic Studies Institute (Carlisle: US Army War College, 2003).

⁵³⁸ United States Department of State 1910, Convention (No. IV) Respecting the Laws and Customs of War on Land, with Annex of Regulations, 26 January 1910, T.S. No. 539, 36 Stat. 2277; Burns H. Weston, Richard A. Falk, and Anthony D'Amato, eds., *Basic Documents in International Law and World Order*, (St. Paul, MN: West Publishing, 1990), pp. 129-136.

a residential area, using an indiscriminate weapon, is sufficient to demonstrate that the juridical norm of distinction was violated. The civilian death toll of 80 and the injury count of 200 unequivocally reaffirms this fact. Following the botched Fadlallah assassination, Hezbollah arrested conspirators, and the international community expressed outrage over the scale of the civilian casualties.⁵³⁹

This operation was ultimately unsuccessful due to a disconnect between policy recommendations and implementation. It can be surmised that US officials, in response to the murder of their colleagues and the embassy bombings in Beirut, acted per Miles' Law. This bureaucratic policy approach can be summed up as a 'where you stand depends on where you sit' mentality.⁵⁴⁰ Simply put, those who personally experienced, to a greater degree, the effects of terroristic activities were more likely to advocate for the preemptive assassination strategy touted by the CIA. The idea that personal position dictated perspective is exemplified by Casey. By being close to the action, they experienced the terror that these extremist organizations can inflict firsthand. Consequently, they were more likely to 'stand' with Casey's position, as this seemed like the appropriate strategy from 'where they sat.' But it is also quite fascinating that there was no single position with the CIA, indeed distinct disagreement.

For decades, Imad Mughniyeh had been considered a terrorist chieftain by intelligence agencies.⁵⁴¹ He was behind several terror attacks, kidnappings and hijackings since the early 1980s.⁵⁴² According to political science scholars like Mike Davis and Robin Wright, and indeed former practitioners like Robert Baer, Mughniyeh operated with Iranian interests in mind, ensuring that his legacy was one of sustained support of the Iranian regime.⁵⁴³ Swedish academic and

⁵³⁹ As'ad Haydar, 'Al-Mustaqbal Interviews Shi'ite Leader Fadlallah,' FBIS Vol. 08 July 1985, from *Lebanon, Paris al-Mustaqbal*, 06 July 1985, p. G-3.

⁵⁴⁰ Rufus E. Miles, 'The Origin and Meaning of Miles' Law,' *Public Administration Review*, Vol. 38, No. 5 (1978), pp. 399-403.

⁵⁴¹ Robin Wright, *Sacred Rage* (New York: Touchstone, 2001), p. 270.

⁵⁴² Baer, *See No Evil: The True Story of a Ground Soldier in the CIA's War on Terrorism*, p. 92.

⁵⁴³ Mike Davis, *Buda's Wagon: A Brief History of the Car Bomb* (New York: Verso, 2007), pp. 83, 86; Baer, *See No Evil*, p. 92; Wright, *Sacred Rage*, p. 270; Ray R. Anderson, Robert F. Seibert and Jon Wagner, *Politics and Change in the Middle East: Sources of Conflict and Accommodation*, 5th ed., (Upper Saddle River, NJ: Prentice Hall, 1998), pp. 64-67; Richard Norton, *Hezbollah: A Short History* (Princeton, NJ: Princeton University Press, 2007), p. 73 (Norton posits that 'there

Hezbollah scholar Magnus Ranstorp recognized that Mughniyeh had been targeted not only as a retaliatory operation but also for his terror organization role. According to Ranstorp, Hezbollah operates as a clan-based system—with its structure, operations and activities being directed by ‘two [Mughniyeh and Hamadi] clans [which] have been continuously pinpointed by the authorities’ as critical to the terror group.⁵⁴⁴ These clan ties create an important foundation within the Hezbollah organization. Baer even discovered that ‘everyone was either related by blood, had fought together in Fatah or hailed from the ‘Ayn- Al-Dilbah neighbourhood.’⁵⁴⁵

If Mughniyeh played such a prominent role in Hezbollah, why not focus the operation on him? Well, there is no clear-cut answer. Since 1945, international politics has gradually focused more and more on non-state actors. It appears as though, in pursuing these ‘high-level terrorists,’ the US neglected to recognize that terror groups like Hezbollah still operate in clan structures—therefore undervaluing Mughniyeh’s importance in the organization.⁵⁴⁶ Thus, tunnel vision prevented Americans from seeing the ‘broader picture’—the interconnectedness between state and non-state actors.⁵⁴⁷

This section has sought to discover the US counterterror program's origins by examining its initial failed operation—the Fadlallah affair. In doing so, several issues were identified, many of which remain unresolved to this day. Still, assassination strikes were absent from American policy in the Middle East for more than twenty years after 1985, perhaps suggesting a degree of policy learning. Instead, the US often preferred overt displays of force, such as participating in the bombing of Libya in 1986. Even here, under what many regarded as a more pro-active Reagan

was no ‘kidnapping-central,’ but a cabal of militants, some certainly linked to Hezbollah, others to various gangs and groups... Although Iran did not exercise direct control of the kidnappers, its revolutionary regime did exert strong ideological influence.’)

⁵⁴⁴ Magnus Ranstorp, *Hizb ‘allah in Lebanon: The Politics of the Western Hostage Crisis* (London: MacMillan, 1997), pp. 54, 64.

⁵⁴⁵ Baer, *See No Evil*, pp. 114-115.

⁵⁴⁶ Chasdi, ‘Counterterror Failure: The Fadlallah Assassination Attempt,’ pp. 351-352, 357 (‘[a]lthough there is no authoritative explanation why Imad Mughniyeh was not targeted for assassination at the time, the poor understanding by US officials concerning the role of family and clan dynamics within Hezbollah probably played a pivotal role in this fundamental misjudgment.’)

⁵⁴⁷ For examples see Charles W. Kegley Jr., *World Politics: Trends and Transformation*, 11th Ed., (Belmont, CA: Thomson Wadsworth, 2007).

administration, there was much hesitancy and argument.⁵⁴⁸ In counterterrorism, past operations are just as important as future ones as they offer strategic guidance, operational insight and even cautionary reminders. To ensure greater efficacy and legality in the future, the US must include the lessons it has learned from failed operations, like the Fadlallah affair, to improve the efficacy of its counter-terror program. George Santayana's observed that 'those who do not learn history are doomed to repeat it.' This saying must be true since the US government seemingly repeated the Fadlallah affair's mistakes when they targeted Mughniyeh.

The Mughniyeh Operation

To understand and contextualize the 2020 targeted killing of Soleimani, another covert mission that took place twelve years earlier must be presented and examined. Not for its direct connection to Soleimani, although one can easily be established, but rather for its insight into the CIA's changing attitude towards state-led assassinations, and the evermore discounted requirement of authority and proof of threat before such operations are launched.⁵⁴⁹ As in mathematics or geography, finding two points of reference will allow us to trace the development of the [actual] US position on state-led counter-terrorism assassinations over the past twelve years.

The target was Imad Mughniyeh, Hezbollah's international operations chief. He had been on the radar of most intelligence agencies following his involvement in several terror plots, kidnappings, bombings, hijackings, torture and executions.⁵⁵⁰ The most notable of which included his participation in the 'embassy bombings in Beirut that killed 63 people, including eight CIA

⁵⁴⁸ Timothy Naftali, *Blind Spot: The Secret History of American Counterterrorism* (New York: Basic, 2005), pp. 159-76.

⁵⁴⁹ See also Masoud Kazemzadeh and Gabriel Emile Eid, 'An Analysis of the Assassination of the Lebanese Hezbollah Commander Imad Mughniyeh: Hypotheses and Consequences,' *American Foreign Policy Interests* Vol.30, No.6, (2008), pp. 399-413; Gary C. Gambill and Bassam Endrawos, 'Bin Laden's Network in Lebanon,' *Middle East Intelligence Bulletin*, Bd 3, (2001); Iver Gabrielsen, 'The Evolution of Hezbollah's Strategy and Military Performance, 1982–2006,' *Small Wars & Insurgencies* Vol.25, No.2, (2014), pp. 257-283; Hussain Abdul-Hussain, 'Hezbollah: A State Within a State,' *Current Trends in Islamist Ideology* Vol.8 (2009), pp. 68-81; and David S. Sorenson, 'Warriors of God: Inside Hezbollah's Thirty-Year Struggle Against Israel,' *Middle East Journal* Vol.66, No.2 (2012), pp. 383-5.

⁵⁵⁰ Tim Arango et. al., 'Qassim Suleimani, Master of Iran's Intrigue, Built a Shiite Axis of Power in Mideast,' *New York Times*, 12 May 2020.

officers. Hezbollah, supported by Iran, was involved in a long-running shadow war with Israel and its principal backer, the United States.’ Since then, some claimed there had been ‘an open license to find, fix and finish Mughniyeh and anybody affiliated with him.’⁵⁵¹

Before the mission to kill Osama bin Laden in 2011, this particular covert joint operation between Mossad and the CIA ‘marked one of the most high-risk actions by the United States.’ The CIA has still chosen not to formally acknowledge its participation in the operation, despite evidence to the contrary. Five former US intelligence officials involved in the mission have since confirmed that the CIA provided assets to track Mughniyeh and participated in the manufacturing, testing, and installation of the car bomb, which eventually killed him.⁵⁵² However, it is fairly obvious why the CIA chose to distance itself from the operation: the killing of Mughniyeh was carried out on somewhat shaky legal grounds.⁵⁵³ It was a unique complex of circumstances that contributed to this legal uncertainty. For the purposes of this examination, two uncontested operational elements will be presented. First, the operation targeted Mughniyeh in Syria—a country with which the US was not at war. And second, the method used to kill him was, as some legal scholars claim, a violation of ‘killing by perfidy,’ rule number 65 of customary international law.⁵⁵⁴

Despite residing in Syria, Mughniyeh maintained his position as operational director of Shiite militias training in Iraq. Since 2003, these militant groups have been trained to target coalition forces, including the US.⁵⁵⁵ Rather like Soleimani, Mughniyeh was key to Hezbollah’s

⁵⁵¹ Adam Goldman and Ellen Nakashima, ‘CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing,’ *The Washington Post*, 30 January 2020.

⁵⁵² Ibid, see also Ofira Seliktar and Farhad Rezaei, ‘Hezbollah in Lebanon: Creating the Model Proxy,’ in *Iran, Revolution, and Proxy Wars* (London: Palgrave Macmillan, 2020), pp. 21-56; Jay P. Heidekat, ‘Hezbollah’s Resistance,’ *Constructing the Past* Vol.11. No.1 (2010), pp. 10; and Bruce Riedel, ‘America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,’ *The Brown Journal of World Affairs* Vol.15., No.1 (2008), pp. 101-11.

⁵⁵³ This is not the first time that the CIA had chosen to distance itself from their operations. For further discussion on the topic see Steve Coll, *Directorate S: The CIA and America’s Secret Wars in Afghanistan and Pakistan* (New York: Penguin Books, 2019).

⁵⁵⁴ IHL Database, ‘Customary International Law, Rule No. 65: Perfidy,’ *International Committee of the Red Cross (ICRC)*, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule65>.

⁵⁵⁵ See Matthew Levitt, *Hezbollah: The Global Footprint of Lebanon’s Party of God* (Washington DC: Georgetown University Press, 2015).

operational success. Amos Yadlin, who served until 2010 as the head of Israel's military intelligence, confirmed that Mughniyeh held a significant role in Hezbollah. In fact, in the organization's hierarchical structure, he was positioned just below Hassan Nasrallah, the Hezbollah leader. Mughniyeh was, according to Yadlin, 'the commander and chief of all military and terror operations... [as well as being an] agent of the Iranians.' In 2008, then-Secretary of Homeland Security, Michael Chertoff, reported that Hezbollah made 'al-Qaeda look like a minor league team.' According to James Bernazzani, chief of the FBI's Hezbollah unit and later Deputy Director of the CIA's Counter-terrorism Center, 'Mughniyeh and his group were responsible for the deaths of many Americans.'⁵⁵⁶ Although these figures were all inclined to employ slightly hyperbolic language, it was nevertheless clear that Mughniyeh was not just another target—he was *the* target, considered by some to be the most powerful terrorist in the region at the time.

Before proceeding further to analyze a key 2002 meeting between the Joint Special Operations Command (JSOC) and Mossad, it is important to briefly note this unit's purpose and role within the greater US military apparatus. JSOC is understood to be an elite special operations force tasked with finding and eliminating terrorists.⁵⁵⁷ In other words, JSOC is different from regular special forces that often undertake security sector reform work or counter-insurgency in partnership with local allies. Although its operations and missions are highly classified, in exceptional cases, its accomplishments become widely publicized. Examples of this include the killings of Osama bin Laden and Abu Bakr al-Baghdadi, which would not have been possible with the technology and support offered by this unit.⁵⁵⁸

⁵⁵⁶ Goldman and Nakashima, 'CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing.'; see also Hala Jaber, *Hezbollah: Born with a Vengeance* (New York: Columbia University Press, 1997); Amy B. Zegart, *Spying Blind: The CIA, the FBI, and the Origins of 9/11* (Princeton: Princeton University Press, 2009); Mark Mazzetti, *The Way of the Knife: The CIA, a Secret Army, and a War at the Ends of the Earth* (New York: Penguin, 2014); and James Risen, *State of War: The Secret History of the CIA and the Bush Administration* (New York: Simon and Schuster, 2006).

⁵⁵⁷ Sean Naylor, *Relentless Strike: The Secret History of Joint Special Operations Command* (New York: St. Martin's, 2016).

⁵⁵⁸ See also Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001* (New York: Penguin, 2004); Tom Diaz and Barbara Newman, *Lightning out of Lebanon: Hezbollah Terrorists on American Soil* (Thousand Oaks: Presidio Press, 2006); Matthew Levitt, 'Hezbollah: A Case Study of Global Reach,' *Intelligence and Terrorism Information Center at the Center for Special Studies*, (2003);

Six years before the joint operation, JSOC met with Mossad to discuss counter-terrorism operations, goals and proposed targets. To gauge their Israeli counterparts' reaction, JSOC officials nonchalantly brought up the idea of a joint mission to target Mughniyeh. No concrete plans were borne from that meeting. But both parties reaffirmed their collective desire to eliminate Mughniyeh—and so, the initial idea was planted. Former US intelligence officials recount how, years later, the Israeli intelligence agency approached the CIA to inquire about what such a joint mission might look like—with Mossad even proposing to target him while he was in Damascus. The Israeli proposal to launch a joint operation to target Mughniyeh came when both countries were closely working to thwart the ‘nuclear ambitions of Syria and Iran... [by] actively trying to sabotage the Iranian nuclear program.’⁵⁵⁹

A former US official admits that Israel’s reason for targeting Mughniyeh ‘was revenge’ driven. The Americans did not worry about underlying motivations, so long as the operation would result in Mughniyeh’s death. Yet, despite sufficient evidence to link Mughniyeh to Hezbollah and its terror campaigns directly, official authorization was still necessary domestically before the CIA could participate in the joint operation. A former intelligence officer involved in the process recalled how this required the official authorization from President George W. Bush, the Director of National Intelligence, the Office of Legal Counsel at the Justice Department, the National Security Adviser and the Attorney General.⁵⁶⁰ Requesting permission for the joint operation added an element of legitimacy to the CIA mission. As another former official recalled, the process was a ‘rigorous and tedious’ process. First, the CIA had to demonstrate that Mughniyeh ‘was a continuing threat to Americans,’ which could not simply rely on his past involvement in terror plots like the US embassy bombing in Beirut, which took place in 1983. In short, ‘the decision was

Marc R. DeVore, Armin B. Stähli, and Ulrike Esther Franke, ‘Dynamics of Insurgent Innovation: How Hezbollah and Other Non-State Actors Develop New Capabilities,’ *Comparative Strategy* Vol.38, No.4 (2019), pp. 371-400; and Sarah Cohler, ‘Hezbollah: Analysis of Violence,’ *American Diplomacy*, March 2011.

⁵⁵⁹ Goldman and Nakashima, ‘CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing.’

⁵⁶⁰ Unnamed Former US Intelligence Agent quoted in Ibid.

we had to have absolute confirmation that it was self-defence,' not an operation driven by convenience, opportunity or revenge.⁵⁶¹

Nevertheless, as a consequence of the September 11th attacks, the CIA's attitude towards state-sponsored assassination campaigns had undergone a full 180° shift. Before 2001, the 'US government often took a dim view of Israeli assassination operations... [going so far as publicly condemning] Israel's botched attempt in 1997 to poison the leader of Hamas, Khaled Meshal, in Amman, Jordan. Given that Mossad strikes frequently, it has often been remarkably clumsy in its operations. The episode ended with Mossad agents and the Clinton administration forcing Israel to provide the antidote that saved Meshal's life.'⁵⁶² Yet barely a decade after this intervention, the US participated in a joint operation targeting Mughniyeh. This foreign policy shift suggests that the American restraint melted away as the CIA began to target figures well beyond defined military theatres and the ungoverned spaces of Pakistan, Yemen and Somalia, where the agency or the military have deployed drones against al-Qaeda and its allies.⁵⁶³

American University College of Law Professor Stephen I. Vladeck has determined that in terms of the law, the government has at least some authority to use lethal force in self-defence even outside the context of ongoing armed conflict. However, 'the million-dollar question is whether the facts actually support a determination that such force was necessary and appropriate in each case.' Mary Ellen O'Connell, a legal expert and professor at Notre Dame Law School, believes that killing using methods preferred by terrorists and gangsters is unbecoming of state-funded intelligence agencies. In terms of legal implications, the International Law Professor has

⁵⁶¹ Another US official disclosed that the Bush administration 'relied on a theory of national self-defence to kill Mughniyeh,' claiming he was a lawful target because he was actively plotting against the United States and its forces in Iraq, making him a continued and imminent threat who could not be captured. Such a legal rationale would have allowed the CIA to avoid violating the 1981 blanket ban on assassinations in Executive Order 12333. The order does not define assassination.'

⁵⁶² Al Jazeera, 'Kill Him Silently: Mossad vs Khaled Meshaal: The Story Behind Mossad's Bungled Bid to Assassinate Hamas Leader Khaled Meshaal,' *Al Jazeera News*, 20 January 2013, <<https://www.aljazeera.com/programmes/aljazeeraworld/2013/01/201312210472621589.html>>.

⁵⁶³ See also Goldman and Nakashima, 'CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing'; and Micah Zenko, 'Reforming US Drone Strike Policies,' *Council on Foreign Relations*, Special Report No. 65, January 2013, pp. 3-28.

determined that the killing method furthermore ‘violates one of the oldest battlefield rules.’⁵⁶⁴ Yet, one has to concede that O’Connell’s observations amount to expressions of a sense of decency rather than firm legal opinions.

Despite these qualms, it did not take long for the US government to approve the CIA’s covert involvement in a joint operation targeting Mughniyeh. It was not a surprise that Mughniyeh had been a wanted man, as he had been ‘implicated in some of Hezbollah’s most spectacular terrorist attacks.’⁵⁶⁵ This close intelligence cooperation between Mossad and the CIA further confirmed the value of the target. As anticipated, Mossad led the operation. Still, a former US intelligence official noted that despite Mossad’s claim over the operation, it was, in fact, the CIA who retained the power to ‘object and call it off, but it could not execute.’⁵⁶⁶ Importantly for Washington, since Israel spearheaded the operation, the US government would likely not face retribution from Hezbollah—especially if it kept its participation secret.⁵⁶⁷ So, the mission was now a ‘go.’

On February 12th, 2008, Mossad agents were able to track Mughniyeh’s location to a restaurant in Damascus. A CIA undercover team was tasked to plant a bomb within the spare tire of his parked SUV. Then the waiting game began. Mughniyeh finally emerged from the restaurant

⁵⁶⁴ Ibid, see also Davida Kellogg, ‘When Honour and Strategic Advantage Converge: A Jominian Argument for Abandoning Torture as a Tactic Intended to Contribute to Security in the Altered Strategic Landscape of Terror Warfare,’ from *The War on Terror-Ethical Considerations*, Proceedings from the 7th Canadian Conference on Ethical Leadership, (Canadian Defence Academy Press, 2006); Morten Storm with Paul Cruickshank and Tim Lister, *Agent Storm: My Life Inside Al Qaeda and the CIA* (New York: Grove/Atlantic, 2014); and Alessandro Dal Lago and Salvatore Palidda, *Conflict, Security and the Reshaping of Society: The Civilization of War*, (London: Routledge, 2010).

⁵⁶⁵ See also US Government Publishing Office, ‘Hezbollah in Latin America: Implications for US Homeland Security,’ Hearing before the Subcommittee on Counterterrorism and Intelligence of the Committee on Homeland Security, *House of Representatives*, 112 Congress, 1st Session, 07 July 2011, Accessed at: <<https://www.govinfo.gov/content/pkg/CHRG-112hhrg72255/html/CHRG-112hhrg72255.htm>>.

⁵⁶⁶ Goldman and Nakashima, ‘CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing.’

⁵⁶⁷ See also Jessica T. Darden, *Aiding and Abetting: US Foreign Assistance and State Violence*, (Stanford: Stanford University Press, 2019).

around 9:00 pm local time—but he was not alone. Soleimani was also with him.⁵⁶⁸ One former intelligence officer recalled how ‘at one point, the two men were standing there, same place, same street. All they had to do was push the button’.⁵⁶⁹ A few sources have corroborated this, recalling how agents ‘spotted the Hezbollah commander talking with another man, who they quickly determined was [Soleimani]. Excited by the possibility of killing two archenemies at once, the Israelis phoned senior government officials. But Prime Minister Ehud Olmert denied the request, as he had promised the Americans that only [Mughniyeh] would be targeted in the operation.’⁵⁷⁰

The joint operation could have resulted in eliminating two terrorists that night—but it did not. Neither Mossad nor the CIA had the ‘legal authority to kill Soleimani...[as] there had been no presidential finding to do so’.⁵⁷¹ So, Israel had to let its arch-enemy, the key coordinator of Shiite training camps in Iraq, walk away. So, when Soleimani cleared the area, and Mughniyeh was within feet of the SUV, agents in Tel Aviv remotely triggered the controlled explosive and killed its intended target. Only one man died that night—the intended target. There was no collateral damage and no international backlash. Faced with the temptation to rid the world of two terrorists, both agencies demonstrated a commendable level of legal restraint. Without the explicit authority to kill Soleimani, neither the CIA nor Mossad acted to eliminate him.⁵⁷²

From Washington’s perspective, the mission was doubly successful, as Mughniyeh was killed, and Israel took the blame. The CIA walked away unscathed, having helped their Israeli counterparts eliminate a senior member of Hezbollah. Sean McCormack, a spokesman for the US

⁵⁶⁸ See Kai Bird, *The Good Spy: The Life and Death of Robert Ames* (New York: Broadway Books, 2015). Within the book, Bird confirmed that it was a CIA undercover team that carried out the assassination.

⁵⁶⁹ Goldman and Nakashima, ‘CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing.’

⁵⁷⁰ Arango, ‘Qassim Suleimani, Master of Iran’s Intrigue.’; see also Joel Bainerman, *Inside the Covert Operations of the CIA & Israel's Mossad* (New York: SP Books, 1994); Ephraim Kahana, ‘Mossad-CIA Cooperation,’ *International Journal of Intelligence and Counterintelligence* Vol.14, No.3’ (2001), pp. 409-420; Douglas Little, ‘Mission Impossible: The CIA and the Cult of Covert Action in the Middle East,’ *Diplomatic History* Vol.28, No.5 (2004), pp. 663-701; and Matt Webster, *Inside Israel’s Mossad: The Institute for Intelligence and Special Tasks* (New York: Rosen Publishing Group, 2002).

⁵⁷¹ Goldman and Nakashima, ‘CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing.’

⁵⁷² Eric Schmitt et al., ‘For Trump, a Risky Decision on Suleimani Is One Other Presidents Had Avoided,’ *The New York Times*, 04 January 2020.

State Department, noted, '[t]he world is a better place without [that] man in it. He was a coldblooded killer, a mass murderer and a terrorist responsible for countless innocent lives lost.'⁵⁷³ As members of the intelligence community can attest to, no operation resulting in a loss of life is celebrated. A former official recalled that the mood within the CIA was certainly not jubilatory after the death of Mughniyeh was confirmed. There was too much trepidation about where and when retaliation and fallout might occur. The operation against Mughniyeh demonstrated that although the CIA and Mossad had a chance to eliminate Soleimani easily, they decided not to.⁵⁷⁴ Convenience does not confer legitimacy, and so Soleimani would live to see another day.

⁵⁷³ Goldman and Nakashima, 'CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing.'

⁵⁷⁴ For background see Gary Schroen, *First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan* (New York: Presidio Press, 2006); Henry A. Crumpton, *The Art of Intelligence: Lessons from a Life in the CIA's Clandestine Service* (New York: Penguin Books, 2013). It should also be noted that this operation bears some similarities to previous missions planned against Osama bin Laden in the 1990s. For further discussion see Naftali, *Blind Spot*.

Chapter 5: Why Soleimani? Why Now?

Power, Influence & Legacy

John Maguire, former CIA officer in Iraq, acknowledged that ‘Soleimani [was] the single most powerful operative in the Middle East...and no one ever heard of him.’ When his name was brought up in conversation, many avoid discussing him further. He appeared to ‘exist in a special category, an enemy both hated and admired: A Middle Eastern equivalent of Karla, the elusive Soviet master spy in John le Carré’s novels.’⁵⁷⁵ But who was this elusive character? And why did the CIA think his assassination necessary?

In 1957, Qasem Soleimani was born in the village of Qalat Molk in the district of Rabor, Iran. He was the middle child of five siblings and the son of a farmer who suffered most of his life under the pressure of severe financial circumstances. To help his father repay these debts, Soleimani left his village at the age of thirteen and began work in construction at the Kerman Water Organization in the provinces’ capital. It was not long until he joined the Islamic Revolutionary Guard Corps (IRGC) in 1979, and because of his obvious intelligence, he quickly climbed the ranks.

At the onset of the Iran-Iraq war, Soleimani was sent to the frontlines to command the IRGC’s 41st Sarollah Division while still in his early twenties.⁵⁷⁶ He spent most of the war on the battlefield, facing chemical weapons and high casualty rates—comparable only to the First World War.⁵⁷⁷ Soleimani’s vision was shaped by the existential conflict between Iran and Iraq in the 1980s.⁵⁷⁸ According to Gershon Hacocheh, a senior research fellow at the Begin-Sadat Center for Strategic Studies, Soleimani learned a lot about military strategy during the war. Confronted with

⁵⁷⁵ Dexter Filkins, ‘The Shadow Commander,’ *The New Yorker*, 23 September 2013.

⁵⁷⁶ Raz Zimmt, ‘Portrait of Qasem Soleimani, Commander of the Iranian Islamic Revolutionary Guards Corps Quds Force, Instigator of Iranian Subversion and Terrorism in the Middle East and around the Globe,’ *The Meir Amit Intelligence and Terrorism Information Center: Israeli Intelligence and Heritage Commemoration Center*, 29 October 2015, p. 8.

⁵⁷⁷ Arango, ‘Qassim Suleimani, Master of Iran’s Intrigue’; see also Ali Alfoneh, *Brigadier General Qassem Suleimani: A Biography* (New York: American Enterprise Institute, 2011).

⁵⁷⁸ See also Ahmed S. Hashim, *Iranian Ways of War: From Cyrus the Great to Qasem Soleimani*, (London: Hurst, 2020).

a lack of material resources and somewhat archaic weapons systems, Soleimani developed an unorthodox guerrilla strategy. In doing so, he ‘spearheaded the advent of Iran’s non-conventional conception of war.’⁵⁷⁹ After the war, Soleimani was sent back to Kerman and assigned a position tasked with targeting drug cartel activities in Iran’s southeast.⁵⁸⁰ His successful operations against the cartels did not go unnoticed by the supreme leader, who, impressed with his strategic prowess, appointed him commander of the Quds force in 1998.⁵⁸¹

These formative experiences provided Soleimani with the ability to approach unconventional situations creatively. As he advanced in rank, he became better able to implement these strategic operations at a higher tempo and with a notable level of success. Hacoen has argued that Soleimani used this knowledge and experience to turn burgeoning terror groups like Yemen’s Houthis, Palestine’s Hamas and Lebanon’s Hezbollah into ‘formidable war machines.’ He achieved this by establishing an extensive network, which allowed terror cells to communicate and collaborate covertly.⁵⁸²

Meir Dagan, former head of Mossad, recognized that Soleimani was both politically astute and very well connected.⁵⁸³ This meant that his influence was not regionally confined. When interests were aligned, the US would find a way to communicate and collaborate with Soleimani indirectly. Even in the days following the September 11th attacks, Ryan Crocker, a senior State Department official, travelled to Geneva to secretly meet with Iranian diplomats who answered to Soleimani. Both parties were brought together by their mutual desire to destroy the Taliban. The Iranians would provide Crocker with maps identifying the most recent movements of the Taliban,

⁵⁷⁹ Gershon Hacoen, ‘Qassem Soleimani’s Unique Strategic Significance,’ *Begin-Sadat Center for Strategic Studies*, February 2020, p. 13.

⁵⁸⁰ Zimmt, ‘Portrait of Qasem Soleimani,’ p. 10; see also Nibras Kazimi, ‘Qasem Soleimani: A Caesar Interrupted?’ *Bustan: The Middle East Book Review* Vol.11, No.1 (2020), pp. 20-33.

⁵⁸¹ Udit Banerjea, ‘Revolutionary Intelligence: The Expanding Intelligence Role of the Iranian Revolutionary Guards Corps,’ *Journal of Strategic Security*, Vol. 8, No. 3 (2015), pp. 93-106.

⁵⁸² Zimmt, ‘Portrait of Qasem Soleimani,’ pp. 11-13.

⁵⁸³ Meir Dagan, as quoted in Filkins, ‘The Shadow Commander’; see also Florin Diaconu, ‘Iranian Grand Strategy in The Greater Middle East, The IRGC And General Qassem Soleimani,’ *International Scientific Conference Strategies XXI*, Carol I National Defence University Publishing House, 2017.

and in exchange, the US would provide Iran with the locations of al-Qaeda sympathizers and organizers.⁵⁸⁴

This relationship would be short-lived when in January of 2002, then-President George W. Bush gave his famous ‘axis of evil’ speech in which he mentioned Iran alongside enemies like North Korea and Iraq. The meetings between Crocker and the Iranians effectively ended with the last words of this oration. That ‘one speech changed history,’ Crocker recalled.⁵⁸⁵ The relationship between the US and Iran further degraded following the 2003 invasion of Iraq—when the two countries were now considered all but open enemies.⁵⁸⁶

Tensions escalated further on January 20th, 2007, when approximately twelve enemy fighters entered a government compound in Karbala, Iraq and killed five American soldiers.⁵⁸⁷ They were dressed in American-style Army uniforms, carried US weapons and radios, drove in a convoy of five sport utility vehicles and passed the guards by confidently barking basic English commands. Months later, the US announced that it suspected Iran to be behind the Karbala attack.⁵⁸⁸ Immediately following this announcement, Soleimani sent a direct message to an American ambassador. He swore: ‘on the grave of Khomeini I have not authorized a bullet against the US’.⁵⁸⁹ But the Americans did not believe him. Despite calling Soleimani ‘truly evil,’ General Petraeus maintained covert communication channels with Soleimani for years—even during and after the Karbala attack. As leaked diplomatic cables reveal, Petraeus was collaborating with Soleimani through high-ranking Iraqi leaders to negotiate deals, exchange relevant information

⁵⁸⁴ Aaron Blake, ‘When the United States and Qasem Soleimani Worked Together,’ *Washington Post*, 03 January 2020; see also Filkins, ‘The Shadow Commander.’

⁵⁸⁵ Blake, ‘When the United States and Qasem Soleimani Worked Together.’

⁵⁸⁶ Barbara Slavin, ‘Qassim Suleimani’s Killing Will Unleash Chaos: Revenge is not a Strategy,’ *The New York Times*, 03 January 2020.

⁵⁸⁷ US Department of Defence, ‘Karbala Attackers Used US Army-Styled Uniforms to Gain Access,’ *American Forces Press Services*, 26 January 2007.
<<https://archive.defense.gov/news/newsarticle.aspx?id=2838>>.

⁵⁸⁸ Michael R. Gordon, ‘US Ties Iran to Deadly Iraq Attack,’ *The New York Times*, 02 July 2007.

⁵⁸⁹ Filkins, ‘The Shadow Commander’; and Blake, ‘When the United States and Qasem Soleimani Worked Together.’

and even secure a ‘cease-fire between radical Shiite cleric Moqtada al-Sadr’s militia and the US-backed Iraqi government.’⁵⁹⁰

In April of 2008, Soleimani became nervous following the offensive actions of Iraqi Prime Minister Nouri al-Maliki towards the south of the country. Filkins recounted how Soleimani anxiously began reaching out to US leaders via text messages to ask for support in addressing the Maliki matter, reasserting that the US and the Iranian government had a similar interest in ensuring that Iraq had a strong and stable government. With the rise of the Islamic State in Syria and Iraq (ISIS), the mutual desire to quash this common enemy brought the US and Iran to the (covert) bargaining table.⁵⁹¹

Soleimani was also very charismatic. Some even go so far as to attribute much of Hezbollah's power to Soleimani’s cult of personality. This is not difficult to believe, especially when considering the leaked 2009 video recording of his visit to Paa-Alam Heights. Standing on a hilltop overlooking the barren land, which once was the scene of a dreadful battle over the al-Faw Peninsula, Soleimani recalled war stories while a soundtrack of soft music and prayers played in the background. During this romanticized storytelling, Soleimani notably referred to the battlefield as a unique paradise—a place ‘in which morality and human conduct are at their highest.’⁵⁹² To Hezbollah, Soleimani was more than just a strategic leader; he was also their spiritual advisor.

⁵⁹⁰ Blake, ‘When the United States and Qasem Soleimani Worked Together’; see also Filkins, ‘The Shadow Commander.’

⁵⁹¹ Ibid; see also Phillip Smyth, *The Shiite Jihad in Syria and its Regional Effects*, (Washington, DC: Washington Institute for Near East Policy, 2015); Christopher Phillips, *The Battle for Syria: International Rivalry in the New Middle East* (New Haven: Yale University Press, 2016); Edward Wastnidge, ‘Iran and Syria: An Enduring Axis,’ *Middle East Policy* Vol.24, No.2 (2017), pp. 148-159; Nakissa Jahanbani, ‘Beyond Soleimani: Implications for Iran’s Proxy Network in Iraq and Syria,’ *CTC Perspectives* (2020); and Hanin Ghaddar, ‘Iran and Hezbollah in Syria: US Policy Options,’ *The Washington Institute for Near East Policy* Vol.27 (2018).

⁵⁹² As recounted in Filkins, ‘The Shadow Commander’ (Soleimani referred to: ‘[t]he battlefield [as] mankind’s lost paradise—the paradise in which morality and human conduct are at their highest. One type of paradise that men imagine is about streams, beautiful maidens and lush landscape. But there is another kind of paradise—the battlefield.’

Yet, with respect comes power. Soleimani knew this well. And he was willing to use adventurous means, including the strategic manipulation of certain terror groups, to further the Islamic regime's regional ambitions. He even went so far as to delegate the Iranian Revolutionary Guard to train Hezbollah's paramilitary units.⁵⁹³ However, it did not mean that the IRGC was in charge of Hezbollah. That duty was always kept with Soleimani. Generally speaking, the Iranian regime's control of Hezbollah was always makeshift and incomplete and, as a result, certain Hezbollah cells had a considerable capacity to operate 'in an independent fashion.'⁵⁹⁴ This is not surprising since proxy groups often develop an independent life over time. So, Hezbollah put Soleimani before the IRGC. Perhaps this was partially due to the fact that Soleimani was the principal financier of Hezbollah, lending his strategic, financial and operational support throughout the decades.⁵⁹⁵ Whatever the reason, this ranking was evident when, at the time of his death, Soleimani was considered its sole strategic leader, answering only to Hassan Nasrallah, its Secretary-General.

Still, Soleimani did more than just train and fund Hezbollah. He also took advantage of the political climate in the greater Middle East. Tamir Pardo, former director of Mossad, suggested that Soleimani led a double life of sorts. Publicly, he was a military force commander in Iraq, Lebanon and Syria—but this was partly a cover to mask his secret involvement with a terror organization operating cells in those states.⁵⁹⁶ Other scholars also noticed that Soleimani used his status in the region to exploit the Arab Spring movement to create a 'Shiite Crescent' in the Middle

⁵⁹³ Baer, *See No Evil*; see also Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 324; and Banerjee, 'Revolutionary Intelligence,' pp. 93-106.

⁵⁹⁴ Magnus Ranstorp, *Hizb 'allah in Lebanon: The Politics of the Western Hostage Crisis* (London: Macmillan, 1997), pp. 18-159; Carl Anthony Wege, 'Hizbollah Organization,' *Studies in Conflict and Terrorism*, Vol. 17, 1994, pp. 157-158; See also Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' p. 324.

⁵⁹⁵ Chasdi, 'Counterterror Failure: The Fadlallah Assassination Attempt,' pp. 323-24 (Hezbollah, otherwise known as the Party of God, is essentially an Iranian artifact whose origins can be traced to Lebanon's 1982 Israeli invasion. From the start, Hezbollah benefited from significant political, financial, and military support from Iran's leaders, who sought to confront Israel and the West, primarily utilizing terrorist assaults.'; Hezbollah then 'essentially served as a proxy for the Syrian regime, wherein the terror group would 'carry out terrorist attacks or refrain from doing so in accordance with Assad's appraisal of his geopolitical position vis-à-vis the Israelis.')

⁵⁹⁶ Tamir Pardo, as quoted by Arango, 'Qassim Suleimani, Master of Iran's Intrigue.'

East.⁵⁹⁷ Thus, Soleimani was eager to involve himself in political and military affairs in the region, should there exist an opportunity to manipulate matters favouring the Iranian regime.

Although Soleimani is known for having directed campaigns in several major wars in Iraq, Syria and Lebanon, the apotheosis of Iranian intervention in the region was Yemen.⁵⁹⁸ At the height of this intervention, weapons, tactical training and financial resources were supplied by Hezbollah and Soleimani's Quds Forces to the Houthi movement. The purpose of this was to establish a proxy war—a *necessary* proxy war. Soleimani knew that 'winning the battle in Yemen [would] help define the balance of power in the Middle East' by establishing 'a Hezbollah-like militia in Yemen to confront Riyadh's hostile policies.'⁵⁹⁹ So, he launched a crusade to incite Saudi Arabia, which had at that point 'openly dubb[ed] itself the Middle East's 'Sunni protector' in the face of Iran's 'Shi'a meddling.'⁶⁰⁰

The conflict between Yemen and the Saudis resulted in a humanitarian crisis and an ever-growing sectarian rift.⁶⁰¹ However, this conflict, and to some extent, its fallout, played right into the hands of Soleimani. He had previously allied with former Yemeni president, Ali Abdullah Saleh, who had himself once been a prisoner of the Saudis.⁶⁰² Soleimani planned to over-extend the Saudi's by drawing them into a lengthy and expensive air bombing campaign, a sort of modern-day war of attrition. According to Bruce Riedel, a former CIA analyst and US counter-terrorism expert currently serving as a senior fellow and director of the Brookings Intelligence Project, the Saudis spent 'at least \$5-6 billion a month' attacking Iranian and Houthi targets, which were either

⁵⁹⁷ Zimmt, *Portrait of Qasem Soleimani*, p. 12; see also Geneive Abdo, *The New Sectarianism: The Arab Uprisings and the Rebirth of the Shi'a-Sunni Divide* (Oxford: Oxford University Press, 2017); and Michael Wigginton et al., 'Al-Qods Force: Iran's Weapon of Choice to Export Terrorism,' *Journal of Policing, Intelligence and Counter Terrorism* Vol.10, No.2 (2015), pp. 153-165.

⁵⁹⁸ Arango, 'Qassim Suleimani, Master of Iran's Intrigue.'

⁵⁹⁹ Jonathan Saul, Parisa Hafezi, and Michael Georgy, 'Exclusive: Iran Steps Up Support for Houthis in Yemen's War – Sources,' *Reuters*, 21 March 2017.

⁶⁰⁰ Ali Soufan, 'Qassem Soleimani and Iran's Unique Regional Strategy,' *Combating Terrorism Center at West Point*, Vol. 11, Issue 10, November 2018.

⁶⁰¹ Kim Ghattas, *Black Wave: Saudi Arabia, Iran, and the Forty-Year Rivalry That Unraveled Culture, Religion, and Collective Memory in the Middle East*, (New York: Henry Holt, 2020).

⁶⁰² Soufan, 'Qassem Soleimani and Iran's Unique Regional Strategy.'

non-operational, low-tech or abandoned.⁶⁰³ The financial costs incurred by the Saudis was immense, at a time when the oil revenues to the Kingdom looked increasingly precarious, while Soleimani's losses 'cost... pennies.'⁶⁰⁴ But Yemen was not the only country where Soleimani helped develop Iranian proxy groups.

Beyond the prominent examples of Hezbollah in Lebanon and Syria, and the Houthi Movement/Ansar Allah Rebels in Yemen, Soleimani also managed to establish proxy groups in Iraq with the Asaib Ahl al-Haq Badr Organization, and in Syria with the Fatemiyoun Division (Afghan unit) and Zeynabiyoun Brigade (Pakistani unit).⁶⁰⁵ But Soleimani's impact is much more complex than starting strategic proxy wars. His legacy is woven into the very fabric of international foreign policy. For the purposes of this section, only a few of Soleimani's most significant legacies will be examined.

Soleimani is generally recognized for having created a Shiite power axis in Iran and the Middle East.⁶⁰⁶ Still, his establishment of a 'starkly sectarian atmosphere' may be one of Soleimani's most enduring legacy. To maintain Iran's influence in Syria and Lebanon, Soleimani reignited a Sunni-Shiite conflict that experts believe may endure for a very long time.⁶⁰⁷ But due to a confluence of events, this regional conflict was put on hold and tensions were directed at the United States after the targeted killing of General Soleimani.

⁶⁰³ Bruce Riedel, 'In Yemen, Iran Outsmarts Saudi Arabia Again,' *Brookings Institution*, 06 December 2017.

⁶⁰⁴ Soufan, 'Qassem Soleimani and Iran's Unique Regional Strategy.'

⁶⁰⁵ See Ghattas, *Black Wave: Saudi Arabia, Iran, and the Forty-Year Rivalry That Unraveled Culture, Religion, and Collective Memory in the Middle East*; Furkan Halit Yolcu, 'Iran's Involvement with Syrian Civil War: Background, Reasons and Alternatives,' *Bilgi Dergi* Vol.18, No.2 (2016), p. 35; and Özden Zeynep Oktav, 'Understanding Iran's Approach to Violent Non-state Actors: The ISIS and YPG Cases,' *Violent Non-state Actors and the Syrian Civil War*, (Cham: Springer, 2018), pp. 193-210.

⁶⁰⁶ Arango, 'Qassim Suleimani, Master of Iran's Intrigue'; see also Karim Sadjadpour, 'The Sinister Genius of Qassem Soleimani,' *The Wall Street Journal*, 10 January 2020.

⁶⁰⁷ Filkins, 'The Shadow Commander.'

In Israel, Soleimani directed Hezbollah in their effort against Israel's south Lebanon military occupation during the 1990s.⁶⁰⁸ Together with Hezbollah's military commander, Imad Mugniyah, Soleimani led a successful 'guerrilla warfare campaign, combining ambushes, roadside bombs, suicide bombers, and targeted killings of senior Israeli officers and attacks on Israel defence posts.'⁶⁰⁹ In May 2000, Israel could no longer fend off Hezbollah—and Soleimani with his Quds Force and Hezbollah scored a major victory at the Battle of Khiam.⁶¹⁰ With support [from] the Quds force, Hamas was able to 'dominate the Gaza Strip, capable of firing rockets that can reach into most Israeli territory.'⁶¹¹ Nevertheless, Soleimani did not rely exclusively on proxies or covert manipulation tactics. The Iranian government had been moving plotting Israel for decades, evidenced by its financial and tactical support for Hamas and Palestinian Jihad.⁶¹² Regardless of the means, Soleimani found himself in a favourable position; able to use his proxies to obtain new victories for the Iranian regime.

Despite initial appearances, Soleimani's legacy is not comprised simply of a series of sequential victories. He faced quite a few setbacks as well. In 2003, for example, following the Iraq invasion, Soleimani was worried that once the Americans overthrew Saddam Hussein, they would look to Iran as the next country in need of regime change. When the time came in 2011 for Iraq to negotiate a deal to allow the Americans to stay in the region after the deadline, Soleimani urged the Iraqi government to reject the deal. Instead, offering greater financial and military support to Iraq (through Iran and its numerous proxies). Once the Iraqis rejected the American offer, Soleimani ordered a roadway connecting Tehran to Lebanon, where his Hezbollah

⁶⁰⁸ Augustus Richard Norton, 'The Role of Hezbollah in Lebanese Domestic Politics,' *The International Spectator*, Vol. 42, No. 4 (2007), pp. 475-491.

⁶⁰⁹ Arango, 'Qassim Suleimani, Master of Iran's Intrigue.'

⁶¹⁰ Mona Harband and Lara Deeb, 'Culture as History and Landscape: Hizballah's Efforts to Shape an Islamic Milieu in Lebanon,' *The Arab Studies Journal*, Vol.19, No.1 (2011) pp. 10-41.

⁶¹¹ Arango, 'Qassim Suleimani, Master of Iran's Intrigue'; and Daniel Byman, 'How to Handle Hamas: The Perils of Ignoring Gaza's Leadership,' *Foreign Affairs*, Vol. 89, No. 5, (2010) pp. 45-62.

⁶¹² Daniel Levin, 'Iran, Hamas and Palestinian Islamic Jihad,' *The Iran Primer: United States Institute of Peace*, 09 July 2018.

supporters were based. Iran used that road to send in supplies and military aid to Iraq. In some ways, the road was a metaphor for his regional vision, but it proved to be uneven at best.⁶¹³

Iran-Iraq relations remained troubled. Ryan C. Crocker, former American ambassador to Iraq, recalled how, for Soleimani, ‘the Iran-Iraq war never really ended.’ If Soleimani could not establish a strong Iranian influence in the region, then the next best thing would be to ‘create and influence a weak Iraq.’⁶¹⁴ Thus, Soleimani’s offer to the Iraqi government had an unspoken goal. Iran wanted to ensure that Iraq remained weak so that this conflict could never restart, or if it did, Iraq would find itself at a significant disadvantage. But Baghdad suspected this. Although the US supported the overthrow of Saddam Hussein, it subsequently benefited Iran greatly at the time.⁶¹⁵ Like Iraq, Syria was another of Soleimani’s vital allies.⁶¹⁶ For years, Soleimani worked tirelessly to ensure President Bashar al-Assad remained in power. He recruited militia forces from across the Middle East, the majority of whom came from Iraq, Afghanistan and Pakistan. They were trained in Iran by the IRGC or by Hezbollah in Syria.⁶¹⁷

Soleimani’s well established communication channel with US officials also served him greatly. Yet, Soleimani was not just a messenger or negotiator. As he once noted in correspondence with American officials, he considered himself the ‘sole director of Iran with respect to Iraq, Lebanon, Gaza and Afghanistan.’⁶¹⁸ Thus, his influence and control in Iran, compounded with his establishment of a covert communication channel reaching both allies and enemies alike, marks

⁶¹³ David Adesnik, H.R. McMaster, and Behnam Ben Taleblu, ‘Burning Bridge: The Iranian Land Corridor to the Mediterranean,’ *Foundation for Defence of Democracies*, 18 June 2019.

⁶¹⁴ Arango, ‘Qassim Suleimani, Master of Iran’s Intrigue’; and Renad Mansour and Faleh A. Jabar, ‘The Popular Mobilization Forces and Iraq’s Future,’ *Carnegie Endowment*, April 2017.

⁶¹⁵ Suzanne Maloney, *How the Iraq War Has Empowered Iran* (Washington DC: Brookings Institution, 2008).

⁶¹⁶ See also Paul D. Shinkman, ‘To Defeat ISIS Iraq Forced to Accept Iran’s “Suffocating Embrace”,’ *US News* (2015).

⁶¹⁷ Danny Makki, ‘Qassem Soleimani’s Reign May Be Over, But His Legacy in Syria Will Endure,’ *Middle East Institute*, 22 January 2020; Nakissa Jahanbani, ‘Beyond Soleimani: Implications for Iran’s Proxy Network in Iraq and Syria,’ *Combating Terrorism Center at West Point*, 10 January 2020; Phillip Smyth, ‘How Iran Is Building Its Syrian Hezbollah,’ *Washington Institute*, 08 March 2016; and Phillip Smyth, ‘The Shiite Jihad in Syria and Its Regional Effects,’ *Washington Institute*, February 2015.

⁶¹⁸ Levitt, *Hezbollah: The Global Footprint of Lebanon’s Party of God*, p. 292.

another of his legacies. In 2014, when IS occupied roughly a third of Iraq, Soleimani offered more than just advice and resources. He went to the battlefield to lend his knowledge and expertise. In the battle against IS, Soleimani enlisted Hezbollah and the Quds Force to fight alongside the Iraqis and drive them out of the region. Remarkably, despite declaring Soleimani a terrorist in 2005,⁶¹⁹ the US fought alongside him and with him against a common enemy—IS.

So, while the US was leading air campaigns, Soleimani was directing ground forces. Tamir Pardo recalled how:

[f]rom the shock that befell the Middle East following the rise of IS, [Soleimani] was changing course... [becoming] a regional kingpin player, knowing with great talent how to exploit the secret infrastructure he has established for so many years, to achieve non-covert objectives—to fight, to win, to establish a presence.⁶²⁰

But such favours often require repayment. And although Iraq was not quick to forget Soleimani's contribution in the fight against IS, it knew that Soleimani would not wait long to cash in his reward. Later that year, Soleimani requested permission to enter Iraqi airspace by visiting with Bayan Jabr, the Iraqi transportation minister at the time. He expressed his desire to deliver aid to Assad's government and explained the need to cross over Iraq's airspace. Despite urging from the Obama administration to reject this request, Jabr accepted.

Despite the respect Soleimani received from Jabr, Soleimani was embroiled in several domestic rivalries between his Quds Force and the Iranian Ministry of Intelligence. They criticized his involvement in Iraq and the Sunni population's victimization as 'weakening Iran's long-term

⁶¹⁹ Griffin and Tomlinson, 'Quds Force Commander Soleimani Visited Moscow.'

⁶²⁰ Arango, 'Qassim Suleimani, Master of Iran's Intrigue'; see also Michael Knights et al., 'Soleimani Is Dead: The Road Ahead for Iranian-Backed Militias in Iraq,' *CTC Sentinel* 13, (2020); Shiva Sadeghi and Somaye Solati, 'Study of the Authority in the Discourse of Haj Qasem Soleimani Relying on the Semiotic Structures: Examples Lecture by Trump,' *Islamic Revolution Studies* Vol.1, No.1, (2019), pp. 54-76; and Danny Postel, and Nader Hashemi. 'Playing with Fire: Trump, the Saudi-Iranian Rivalry, and the Geopolitics of Sectarianization in the Middle East,' *Mediterranean Yearbook*, (2018).

interests in the region.’ Cables sent between the rivalling agencies documented the fear that Iran's Ministry of Intelligence had towards Soleimani's ‘policy of Iran in Iraq, [which] has allowed the Americans to return to Iraq with greater legitimacy.’ Other cables reflected the views held by military officials that Soleimani was a conceited and self-centred general who engaged in a conflict which would ‘bolster his potential political aspirations in the future.’⁶²¹ Although not a pleasant legacy, it is certainly one he left behind in Iran. According to sources, these domestic tensions between the Quds Force and the Iranian Ministry of Intelligence continue.⁶²²

In April of 2019, the Trump administration declared the entire Quds Force a terrorist group.⁶²³ Indeed, this was not anything new, and in the United States, Soleimani, Hezbollah and the Quds Force were all widely considered terrorist organizations. Meanwhile, any chance of a diplomatic rapprochement was quashed when President Trump threatened the Iranian president.⁶²⁴ In response, Soleimani stated that ‘it is beneath our president's dignity to respond to you. I, as a soldier, respond to you,’ then disconcertingly warned the US that, ‘we are near you, where you cannot even imagine.’⁶²⁵ It once again demonstrated the power and influence that Soleimani held in Iran—going beyond mere regional politics, to obtain a powerful position from which he could directly respond (with all afforded Iranian authority and legitimacy) to the President of the United States.

⁶²¹ Ibid, see also Maryam Alemzadeh, ‘The Informal Roots of the IRGC and the Implications for Iranian Politics Today,’ *Crown Center for Middle East Studies*, August 2019.

⁶²² Udit Banerjee, ‘Revolutionary Intelligence: The Expanding Intelligence Role of the Iranian Revolutionary Guard Corps,’ *Journal of Strategic Security*, Vol. 8, No. 3 (2015), pp. 93-106.

⁶²³ President Donald J. Trump, ‘Statement from the President on the Designation of the Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization,’ *White House*, 08 April 2019.

⁶²⁴ Donald J. Trump via Twitter on 22 July 2018:

<<https://twitter.com/realDonaldTrump/status/1021234525626609666?s=20>>.

⁶²⁵ Parisa Hafezi, ‘Iran's Soleimani to Trump: We Are Near, Where You Can't Even Imagine,’ *Reuters*, 26 July 2018; see also Michael Singh, ‘The View from Congress: US Policy on Iran,’ Testimony Submitted to the Senate Foreign Relations Committee, *The Washington Institute for Near East Policy* (2017), pp. 9-10; John A. Gentry, ‘Intelligence Services and Special Operations Forces: Why Relationships Differ,’ *International Journal of Intelligence and Counterintelligence* Vol.30, No.4 (2017), pp. 647-86.

After Soleimani's death, Iran experts warned of a potential 'regional mayhem,' which might ensue from rising tensions in Iraq and Syria.⁶²⁶ It is for precisely this reason that earlier American administrations had refrained from directly striking Soleimani as they estimated it 'could destabilize the region further and lead to all-out war between the United States and Iran.'⁶²⁷ Additionally, as a result of the strike on Soleimani, any prospect of revived diplomacy with the United States, perhaps being quietly negotiated through backchannels like Japan and France, was effectively dead.

The talk was now of revenge, not negotiation. His close friend, Ayatollah Ali Khamenei, vowed harsh revenge against the perpetrators of the US strike that killed Soleimani.⁶²⁸ Uzi Rubin, an Israeli Defence Analyst, noticed that notwithstanding a few fractional domestic rivalries, in general, Soleimani, 'who did not suffer from an excess of humility,' was a media darling in Iran and widely admired as a national hero. And although Soleimani's 'demise did not take place on Iranian soil; the country's leaders declared the killing an act of aggression against Iran itself.'⁶²⁹ This was because, as Doron Itzhakov, Professor of Iranian politics at Tel Aviv University, recalled, Soleimani dedicated his entire life to the Iranian regime. He was considered the Supreme Leader's 'ultimate confidant,' pursued the creation of an 'axis of resistance' in the Middle East, and never faltered in his support for Iran and its people.⁶³⁰ Ali Vaez, director of the Iran Programme for International Crisis Group, reported that Soleimani was not the only thing to die in the strike—alongside him died the opportunity of a future Iran deal and any potential diplomatic relationship in the region.⁶³¹

During his career, Soleimani obtained the highest military honours and distinctions, including the prestigious Order of Zolfaghar. When Ayatollah Khamenei presented the medal to

⁶²⁶ See Michael Knights, 'Back into the Shadows? The Future of Kata'ib Hezbollah and Iran's Other Proxies in Iraq,' *Washington Institute*, 2020.

⁶²⁷ Arango, 'Qassim Suleimani, Master of Iran's Intrigue.'

⁶²⁸ Arsalan Shahla and Yasna Haghdooost, 'Iran's Supreme Leader says, Severe Retaliation Awaits Soleimani Killers,' *Bloomberg News*, 03 January 2020.

⁶²⁹ Uzi Rubin, 'Operation 'Shahid Soleimani': Iran's Revenge,' *Begin-Sadat Center for Strategic Studies*, February 2020, p. 7.

⁶³⁰ Doron Itzhakov, 'Dilemmas Facing the Revolutionary Regime Following the Elimination of Qassem Soleimani,' *Begin-Sadat Center for Strategic Studies*, 2020, p.15.

⁶³¹ Arango, 'Qassim Suleimani, Master of Iran's Intrigue.'

Soleimani in February 2019, he made a rather ominous and prophetic statement, saying, in part, that ‘the Islamic Republic needs him for many more years. But I hope that in the end, he dies as a martyr. In the end, Soleimani did die as a martyr. But it was not before becoming a revered political hero within Iran, a powerful foe regionally, and a dangerous enemy internationally. In death, he became a martyr and a catalyst for future political vengeance, the effects of which have yet to be seen.’⁶³²

Plotting & Planning

In early January 2020, Robert O’Brien, the White House National Security advisor, announced that Soleimani had recently returned from Damascus, ‘where he was planning attacks on Americans, soldiers, airmen, Marines, sailors and... diplomats.’⁶³³ The only evidence of this supposed plot remains US government statements (unsupported by any evidence or intelligence) and a news article based upon these unsubstantiated government statements. For reasons of objectivity, most available information, regardless of how contentious or unsubstantiated, is presented and reviewed here to ensure that the resulting narrative is as complete as possible given available open-source material.

To recapitulate, Iran learned two critical lessons from the Iran-Iraq war.⁶³⁴ Firstly, their enemies were not just located geographically in the Middle East. And secondly, covert operations are often more effective than direct hostilities. Soleimani took both lessons to heart and imparted this knowledge to his followers. In May 2011, at a theological seminary in the city of Qom, Soleimani addressed his students, reminding them that ‘Iran’s victory or defeat no longer takes place in Mehran and Khorramshahr. Our boundaries have expanded, and we must witness victory in Egypt, Iraq, Lebanon, and Syria. This is the fruit of the Islamic revolution.’⁶³⁵

⁶³² Ibid, see also Shahram Akbarzadeh, ‘Why Does Iran Need Hizbullah?’ *The Muslim World* Vol.106, No.1 (2016), pp. 127-140; and Ioan Pop and Mitchell D. Silber, ‘Iran and Hezbollah’s Pre-Operational Modus Operandi in the West,’ *Studies in Conflict & Terrorism* (2020), pp. 1-24.

⁶³³ Michael Georgy, ‘Inside the Plot by Iran’s Soleimani to Attack US Forces in Iraq,’ *Reuters*, 03 January 2020.

⁶³⁴ See Filkins, ‘The Shadow Commander,’ 2013.

⁶³⁵ Hacohen, ‘Qassem Soleimani’s Unique Strategic Significance,’ p. 14.

For years, Soleimani believed that Iran's long-term stability depended, in part, on the survival of Syrian President Bashar al-Assad's regime. Accordingly, he was determined to keep Assad in power.⁶³⁶ Assad's potential loss of power threatened Soleimani's influence in the region. Additionally, '[f]or Soleimani, saving Assad was [also] a matter of pride, especially if it meant distinguishing himself from the Americans.' As a former Iraqi official recalled, Soleimani reasoned that '[w]e are not like the Americans. We do not abandon our friends.' For Soleimani, abandoning Assad would require 'abandoning the project of expansion that had occupied him for fifteen years.' For nearly two decades, Soleimani had supplied Assad with a trained militia because his soldiers 'would not fight—or, when they did, they mostly butchered civilians, driving the populace to the rebels.' Soleimani once even vented to an Iraqi politician, noting that '[t]he Syrian army [was] useless!'⁶³⁷

In October of 2019, Soleimani lived up to his moniker of Shadow Commander. He called his Shiite militiamen to meet him at a compound near the Tigris River—overlooking the US embassy in Baghdad. There he allegedly concocted a plan, a way for the Iraqis to stop protesting Iranian intervention and instead shift their displeasure elsewhere, to a common enemy—the Americans. For months, Iraq had been marred by protests, as citizens 'accused [their] government of enriching itself and serving the interests of foreign powers, especially Iran, as Iraqis languish in poverty without jobs or basic services.' Soleimani knew that he needed to quell tensions and redirect this animosity to a different target—a common enemy, the United States. At the Tigris compound, he asked the attendees to fracture into smaller groups hoping that their presence would go unnoticed by the Americans. Then he instructed Abu Mahdi al-Muhandis, his most important

⁶³⁶ See Abbas William Samii, 'A Stable Structure on Shifting Sands: Assessing the Hizbullah-Iran-Syria Relationship,' *The Middle East Journal* Vol.62, No.1 (2008), pp. 32-53; and Rola El Husseini, 'Hezbollah and the Axis of Refusal: Hamas, Iran and Syria,' *Third World Quarterly* Vol.31, No.5 (2010), pp. 803-815.

⁶³⁷ Filkins, 'The Shadow Commander'; see also Anoushiravan Ehteshami and Raymond A. Hinnebusch, *Syria and Iran: Middle Powers in a Penetrated Regional System* (London: Routledge, 2002); and Sherko Kirmanj and Abdulla Kukha Sadq, 'Iran's Foreign Policy towards Iraq and Syria: Strategic Significance and Regional Power Balance,' *The Journal of Social, Political, and Economic Studies* Vol.43, No.1/2 (2018), pp. 152-172.

ally in Iraq, to coordinate with other senior militia heads in the area to ‘step up attacks on US targets in the country.’⁶³⁸

Soleimani was supposedly planning to attack US forces in Iraq to provoke an American response in the area. The overall purpose of this was a distraction—to shift focus away from the Iranian presence in Iraq and ensure that Iraqis would begin to protest the US—thus, taking pressure off Iran, and by extension, Soleimani. Doing so would remind Iraqis that their enemy was not Iran, but rather, the United States. He chose Hezbollah to direct the attacks against US targets in Iraq ‘because it had the capability to use drones to scout targets for Katyusha rocket attacks... [and owned] a drone Iran had developed that could elude radar systems.’⁶³⁹ In his 2004 book *New Rules of the Game*, Daniel Sobelman, an Assistant Professor of International Relations at The Hebrew University of Jerusalem, argued that ‘[o]ne decisive feature of Hezbollah’s strategic weapons—Katyusha rockets and long-range rockets—is that their deployment could produce grave consequences. Therefore, other than a deterrent role, their actual use would be very problematic for Hezbollah and is reserved, in the meantime, for worst-case scenarios’.⁶⁴⁰

Thus, if Sobelman’s reasoning is correct, then the plan would have been as destructive as it was simple. Despite this simple strategy, the plan never reached the launch stage, as Soleimani was executed. A day before the strike on Soleimani, Mark Esper, the US Defence Secretary, advised that ‘the United States might have to take preemptive action to protect American lives from expected attacks by Iran-backed militias,’ noting that ‘[t]he game has changed.’⁶⁴¹ It is important to note at this stage that the information regarding Soleimani’s supposed compound

⁶³⁸ Georgy, ‘Inside the Plot by Iran’s Soleimani to Attack US Forces in Iraq.’

⁶³⁹ Ibid, see also Matthew Levitt, ‘Hezbollah’s Procurement Channels: Leveraging Criminal Networks and Partnering with Iran,’ *CTC Sentinel* 13 (2019), pp. 1-9; Mona Harb, and Reinoud Leenders. ‘Know Thy Enemy: Hizbullah, Terrorism and the Politics of Perception,’ *Third World Quarterly* Vol.26, No.1 (2005), pp. 173-197.

⁶⁴⁰ Daniel Sobelman, ‘Hezbollah’s Arsenal and Means of Deterrence,’ in *New Rules of the Game: Israel and Hezbollah after the Withdrawal from Lebanon*, (Tel Aviv: Institute for National Security Studies, 2004), pp. 83-88; see also Ahmad Nizar Hamzeh, *In the Path of Hizbullah*, (Syracuse: Syracuse University Press, 2004); Eyal Zisser, ‘Hizballah in Lebanon at the Crossroads,’ *Terrorism and Political Violence* Vol.8, No.2 (1996), pp. 90-110; and Magnus Ranstorp, ‘The Strategy and Tactics of Hizballah’s Current Lebanonization process,’ *Mediterranean Politics* Vol.3, No.1 (1998), pp. 103-134.

⁶⁴¹ Georgy, ‘Inside the Plot by Iran’s Soleimani to Attack US Forces in Iraq.’

meeting, as well as the alleged plan to attack the US, is derived from a singular report—written by one author who has declined to disclose how he came upon this information or the validity of his sources. While one unsubstantiated report is insufficient to demonstrate, or, for that matter, prove that Soleimani was plotting to attack US forces, for objectivity, this information (however knotty) was included to present both sides of the argument. According to the US government and the above-referenced news report, Soleimani was executed before putting his plan in motion. Whether this plan existed or not, it is nonetheless clear that the covert operations and strategic manipulations Soleimani had engaged in over the years have earned him the moniker of ‘The Shadow Commander.’ He operated in the shadows for years, directing the most sensitive aspects of Iranian foreign affairs in the region and taunting former US presidential administrations with his seemingly untouchable status.

Hunting Soleimani: From Bush to Trump

January 2020 marked the start of a new decade and a new chapter in the US drone program. The targeted killing of Soleimani was the first time the US had deployed drone technology to eliminate another country’s senior military commander on foreign soil. Since assuming office, President Trump has expanded the boundaries of lethal drone strikes to countries like Somalia and Yemen—with which war has not been declared.⁶⁴²

Remote assassination campaigns had progressed in an escalatory manner since the George W. Bush administration. During the Obama years, drone strikes proliferated as a way of fighting the counter-insurgency in Iraq and Afghanistan ‘without risking military personnel on dangerous air missions.’⁶⁴³ But now, President Trump extended the use of drones as a favourable medium to

⁶⁴² Helen Warrell, ‘From Desert Storm to Soleimani: How US Drone Warfare Has Evolved,’ *Financial Times*, 09 January 2020.

⁶⁴³ Ibid, see also James Igoe Walsh, *The Effectiveness of Drone Strikes in Counterinsurgency and Counterterrorism Campaigns* (Carlisle: Strategic Studies Institute, US Army War College, 2013), pp. 1-77; and Gary Ackerman, Douglas Clifford, and Victor Asal, *How Might Great Power Competition and Regional Dynamics Change Following the Targeted Killing of Qassam Soleimani* (New York: University of Albany Press, 2020).

carry out state-sponsored assassinations.⁶⁴⁴ As Allegra Harpootlian, a contributor to the Truman National Security Project, so eloquently put it, we are just barely ‘into the new decade, and it is somehow already a bigger dumpster fire than the last.’ By his second term, Obama had authorized some 528 strikes, with resulting deaths reaching somewhere between 380 and 801 civilians in Libya, Pakistan, Somalia, and Yemen alone. As soon as President Trump took office, he began to quietly undo the safeguards placed on the CIA-led drone program by the previous Obama administration.⁶⁴⁵

When Obama gave his Nobel Prize speech, he claimed that the thing that separated the US from its enemies was the dedication to protecting civilian lives.⁶⁴⁶ Yet when he gave the speech, US airstrikes were killing ‘more civilians than the Taliban.’ These strikes had hit wedding parties, farmers, pregnant women and small children. In Somalia, drone strikes decimated entire communities, destroying lives, crops, homes and livelihoods. And as the new decade began, President Trump not only carried out a drone strike so drastic and rare that many experts believed it was a straightforward declaration of war, teetering on a war crime as the US president threatened to bomb non-military targets (‘cultural’ sites), a move generally considered ‘a war crime under international law.’ Some American commentators observed that, if anything, ‘Trump’s escalating drone war should remind us all of just how dangerous it is when a president claims the legal authority to kill in secret and no one can stop him. Maybe this decade, we will learn our lesson.’⁶⁴⁷

⁶⁴⁴ Kelsey D. Atherton, ‘Trump Inherited the Drone War but Ditched Accountability,’ *Foreign Policy*, 22 May 2020; see also Jaclyn Tandler, ‘Known and Unknowns: President Obama’s Lethal Drone Doctrine,’ *Notes de la FRS* 7 (2013); and Kevin Howley, ‘I Have a Drone: Internet Memes and the Politics of Culture,’ *Interactions: Studies in Communication & Culture* 7.2 (2016), pp. 155-175.

⁶⁴⁵ Allegra Harpootlian, ‘How the Presidency Seized Control of Drone Strikes,’ *The Nation*, 14 January 2020; see also Andrew Pilecki et al., ‘Moral Exclusion and the Justification of US Counterterrorism Strategy: Bush, Obama, and the Terrorist Enemy Figure,’ *Peace and Conflict: Journal of Peace Psychology* 20.3 (2014), p. 285; and Stuart Casey-Maslen, ‘Pandora’s Box? Drone Strikes Under Jus Ad Bellum, Jus in Bello, and International Human Rights Law,’ *International Review of the Red Cross* 94.886 (2012), pp. 597-625.

⁶⁴⁶ Barack H. Obama, *Nobel Lecture*, (Oslo City Hall, 10 December 2009) <<https://www.nobelprize.org/prizes/peace/2009/obama/26183-nobel-lecture-2009/>>.

⁶⁴⁷ Harpootlian, ‘How the Presidency Seized Control of Drone Strikes’; see also Peter Bergen, ‘Drone Wars: The Constitutional and Counter-Terrorism Implications of Targeted Killing,’ *New America Foundation* (2013); and Katharine Hall Kindervater, ‘Drone Strikes, Ephemeral

Anthony Cordesman, the Arleigh A. Burke Chair in Strategy at the Center for Strategic and International Studies (CSIS), noted how the Soleimani strike was ‘a very different level of escalation.’ When targeting extremists, the US faces a minimal threat of retaliation—perhaps a few sporadic attacks or intensified fighting. In the case of Soleimani, the reprisals could be launched with the full force of the Iranian regime behind it. According to Barbara Slavin, the Director of the Future of Iran Initiative at the Atlantic Council, Trump is ‘trying to do a victory lap here and beat his chest and somehow show this is like killing Baghdadi. But it is not. It is much more serious.’ The Soleimani and Baghdadi killings are in no way similar. In Baghdadi’s case, the US killed ‘a leader in the context of an organization against an extremist movement that did not have a major state sponsor.’ Soleimani, on the other hand, was ‘recognized throughout the Gulf region, for good or bad, as a figure sponsoring groups and supporting countries with a great deal of popular support.’⁶⁴⁸

Obama and Bush Jr. reflected at length and then decided against killing Soleimani. Both administrations ‘reasoned that killing the most powerful general in Iran would only risk a wider war with the country, alienating American allies in Europe and the Middle East and undermining the United States in a region that had already cost plenty of lives and treasure in the past two decades.’⁶⁴⁹ By contrast, Trump threw caution to the wind and decided to go after Soleimani. But why now? The Trump administration has yet to provide any proof that unequivocally demonstrates that something did change to warrant his immediate execution. After all, Gen. Soleimani had been

Sovereignty, and Changing Conceptions of Territory,’ *Territory, Politics, Governance* Vol.5, No.2 (2017), pp. 207-221.

⁶⁴⁸ Siobhán O’Grady, ‘Why Soleimani’s Killing is Different from Other Targeted Attacks by US,’ *The Washington Post*, 04 January 2020; see also Boris Kondoch, ‘The Killing of General Qassem Soleimani: Legal and Policy Issues,’ *Journal of East Asia and International Law (JEAIL)* Vol.13, No.2 (2020), pp. 419-434; and Christopher Zambakari, ‘Executive Powers and the Targeted Killing of Gen. Qassem Soleimani,’ from *Executive Powers and the Targeted Killing of Gen. Qassem Soleimani*, Georgetown Public Policy Review (2020).

⁶⁴⁹ Schmitt et al., ‘For Trump, a Risky Decision on Suleimani Is One Other Presidents Had Avoided’; see also Max Boot, ‘A Few Good Men: Trump, the Generals, and the Corrosion of Civil-Military Relations,’ *Foreign Affairs* Vol.99 (2020), p. 172; and Daniel W. Drezner, ‘Immature Leadership: Donald Trump and the American Presidency,’ *International Affairs* Vol.96, No.2 (2020), pp. 383-400.

targeting Americans since 2003. He had always posed a threat to American lives. So, what changed?

According to Mark Bowden, one of America's long-time commentators on Iran, both bin Laden and Soleimani were 'deadly enemies of the United States' responsible for attacks on Americans, perpetrated in 'foreign lands without the approval of local authorities.' The assassination of bin Laden was 'a powerfully symbolic statement about America's resolve, and a damaging blow to Al-Qaeda, a small stateless terrorist group with which the United States was formally at war—duly authorized by Congress.' But according to Jack Goldsmith, a Harvard Law Professor who served in the White House under Bush, '[t]here is a large legal difference between the president using force in self-defence in an ongoing authorized conflict and the president initiating a conflict, not authorized by Congress, for largely non-self-defensive reasons.'⁶⁵⁰

Another difference was the bin Laden was on the run, whereas Soleimani was not.⁶⁵¹ There 'was never any doubt about the identity and location of Soleimani. He made little effort to hide, presumably because he understood that killing him would gain America little in the short term. Whereas, in the long term, it would undermine its own goals. Presidents George W. Bush and Obama chose not to pull the trigger, despite ample opportunity, for precisely that reason.'⁶⁵² Ultimately, he did not need to be 'hunted' like past terrorists—as he was not in hiding.⁶⁵³

Unlike Obama and Bush before him, Trump had chosen to campaign on promises of resurrecting the practice of torturing captured foreign fighters.⁶⁵⁴ He argued that waterboarding is a 'minor form' of torture, and he would not only bring it back—but that he would also be in favour

⁶⁵⁰ Mark Bowden, 'Comparing Trump's Assassination of Soleimani to Obama's Killing of bin Laden,' *The Boston Globe*, 09 January 2020.

⁶⁵¹ See also Madiha Afzal, 'Around the Halls: Experts React to the Killing of Iranian Commander Qassem Soleimani,' *Brookings Institution*, 03 January 2020.

⁶⁵² Bowden, 'Comparing Trump's Assassination of Soleimani.'

⁶⁵³ Schmitt et al., 'For Trump, a Risky Decision on Suleimani is One Other Presidents Had Avoided.'

⁶⁵⁴ Jennifer Williams, 'From Torture to Drone Strikes: The Disturbing Legal Legacy Obama is Leaving Trump,' *Vox*, 10 January 2020.

of torture methods that were ‘a hell of a lot worse than waterboarding.’⁶⁵⁵ In effect, he reasoned that if the enemy does not play by the rules, neither should the United States. ‘We have an enemy that doesn’t play by the laws,’ Trump said during an interview with CBS’s *Face the Nation*, ‘You could say laws, and they’re laughing. They’re laughing at us right now. I would like to strengthen the laws so that we can better compete.’⁶⁵⁶ Make no mistake, by ‘strengthen,’ President Trump suggested that evermore contentious and shocking torture methods should be permitted to better compete with those used by terror groups.⁶⁵⁷

It is irrefutable that Trump has garnered significant public support for this hard line. As long as he is addressing threats to national security, even if they are perceived threats, Americans will continue to stand by the decisions made by their President. According to Charles Dunlap, Americans believe all US national security threats should be addressed—regardless of whether they violate laws or outrage the international community.⁶⁵⁸ This ingrained American pragmatism has enabled Trump to maintain an aggressive foreign policy stance, going so far as to even announce that the United States is ‘going to have to do things that we never did before. And some people are going to be upset about it, but I think that now everybody is feeling that security is going to rule.’⁶⁵⁹

⁶⁵⁵ Donald J. Trump as quoted in Theodor Meyer, ‘Trump Stands by Proposal to Revive Waterboarding,’ *Politico*, 02 July 2016.

⁶⁵⁶ Donald J. Trump as quoted in Rebecca Savransky, ‘Trump: US Has “Become Very Weak and Ineffective”,’ *The Hill*, 03 June 2016.

⁶⁵⁷ Williams, ‘From Torture to Drone Strikes’ (The ‘worry, then, seems to be that Trump lacks Obama’s strong moral compass and penchant for cautious deliberation, and thus will be much more frivolous about whom we do and do not target with drone strikes. And since the Obama administration’s internal guidelines for determining who can be killed in a drone strike are just that—the administration’s own internal guidelines—and not actual law, Trump could absolutely throw them out and do basically whatever he wants.’)

⁶⁵⁸ Charles J. Dunlap, Jr., ‘Drones versus their Critics: A Victory for President Obama’s War Powers Legacy,’ *Small Wars Journal*, 15 October 2015.

⁶⁵⁹ Donald J. Trump as quoted in Ellis Washington, *The Progressive Revolution: History of Liberal Fascism through the Ages, Vol. V: 2014-2015 Writings* (New York: Rowman & Littlefield, 2016), xxxiv; see also Rubrick Biegon, and Tom FA Watts, ‘When Ends Trump Means: Continuity versus Change in US Counterterrorism Policy,’ *Global Affairs* Vol.6, No.1 (2020), pp. 37-53; Stanley A. Renshon, ‘The Trump Doctrine and Conservative American Nationalism,’ from *The Trump Doctrine and the Emerging International System*, (Cham: Palgrave Macmillan, 2020), pp. 3-38; and Patrick Cockburn, *War in the Age of Trump: The Defeat of ISIS, the Fall of the Kurds, the Conflict with Iran* (London: Verso Press, 2020).

If this were not troubling enough, Fernando Cutz, an assistant to the US National Security Advisor, made a rather interesting observation. He noticed how, for some reason, Trump seems fixated on former US President Barack Obama—trying to outdo his policies and surpass his strategic victories. Cutz has raised an important point. According to a recent fact-checking analysis completed by Daniel Dale, a CNN analyst, this fixation can be quantitatively measured. Trump ‘mentioned Obama 537 times in the first ten months of 2019—a 36 percent increase from the same period in 2018 and up 169 percent from that time frame in 2017.’ As Rice University historian Douglas Brinkley points out, Trump is not unique in nurturing an anxiety about his predecessor's record. Presidents like Roosevelt and Reagan have similarly gone to significant lengths to undo the achievements of the administrations before them. Roosevelt changed the name of the Herbert Hoover Dam to Boulder Dam, and Reagan removed the solar panels installed at the White House by Jimmy Carter.⁶⁶⁰

During his administration, President Obama, with his chief counter-terrorism advisor John Brennan, institutionalized the use of drones and systematized the process of adding targets to a ‘kill list’ and methodically eliminating them. Obama’s drone policies were passed as executive orders, making them relatively easy to undo.⁶⁶¹ When Trump became president, he immediately reworked all of Obama’s drone policy executive orders, giving more authority to the CIA over its drone operations, expanded the boundaries of the proverbial battlefield, scrapped the required civilian casualty reporting, and even established a new drone base in Niger which extended the CIA’s reach much further into Africa than ever before.⁶⁶² Trump’s executive order did not, however, overturn

⁶⁶⁰ Fernando Cutz as quoted in David Nakamura, ‘In Confrontation with Iran, Trump Wrestles with the Shadow of Obama, The Metric He Has to Beat,’ *The Washington Post*, 05 January 2020; see also Daniel Dale, ‘The Numbers Prove it: Trump’s Obama Fixation is Getting Worse,’ *CNN*, 04 November 2019.

⁶⁶¹ Brett Max Kaufman, ‘Trump is Unshackling America’s Drones Thanks to Obama’s Weakness,’ *The Guardian*, 17 September 2018; see also Andrea Germanos, ‘With New Niger Drone Base, Trump’s CIA Poised for Expanded African Footprint,’ *Common Dreams*, 10 September 2018; Akhilesh Pillalamarri, ‘Is the New US Drone Base in Niger Worth the Cost?’ *Defence News*, 16 October 2018.

⁶⁶² Kaufman, ‘Trump is Unshackling America’s Drones Thanks to Obama’s Weakness’; see also Andrea Germanos, ‘With New Niger Drone Base, Trump’s CIA Poised for Expanded African Footprint’: *NYT*, *Common Dreams*, 10 September 2018; Akhilesh Pillalamarri, ‘Is the New US Drone Base in Niger Worth the Cost?’ *Defence News*, 16 October 2018.

the Congressional requirement for the military to continue reporting its strikes and resulting collateral damage. An unnamed Trump administration official maintained that this was a bureaucratic move done for the sole purpose of increasing efficiency and eliminating ‘superfluous reporting requirements.’⁶⁶³

Dr Rita Siemion is not convinced by this statement. Siemion, who serves as international legal counsel for *Human Rights First*, has argued that the Trump’s administration’s actions are ‘an unnecessary and dangerous step backwards on transparency and accountability’ for covert missions that result in civilian casualties.⁶⁶⁴ Rep. Adam Schiff, the Democratic Chair of the House Intelligence Committee, also deemed the rule ‘an important measure of transparency’ and noted that ‘there is simply no justification for cancelling it.’⁶⁶⁵ And so, secrecy not only continues under the Trump administration—it is escalating out of control.⁶⁶⁶ With virtually no bureaucratic oversight nor institutional motivation for accountability, this new decade may see the worst collateral damage from the US drone programme than the last two decades combined.⁶⁶⁷

⁶⁶³ Unnamed Trump administration official as quoted by Thomson Reuters, ‘US Will No Longer Report How Many Civilians It Kills with Drones Outside War Zones,’ *CBC News*, 06 March 2019.

⁶⁶⁴ Rita Siemion as quoted by BBC News Staff, ‘Trump Revokes Obama Rule on Reporting Drone Strike Deaths,’ *BBC News*, 07 March 2019.

⁶⁶⁵ Rep. Adam Schiff as quoted by BBC News Staff, ‘Trump Revokes Obama Rule on Reporting Drone Strike Deaths,’ *BBC News*, 07 March 2019.

⁶⁶⁶ See Christopher R. Moran and Richard J. Aldrich, ‘Trump and the CIA: Borrowing from Nixon’s Playbook,’ *Foreign Affairs*, 24 April 2017.

⁶⁶⁷ See also Tim Weiner, *Legacy of Ashes: The History of the CIA* (New York: Anchor, 2008).

Chapter 6: Striking the Shadow Commander

The Soleimani strike is a unique case in that it offers a contemporary, near real-time look into a counter-terrorism operation directed by the United States government. Ongoing international press coverage on the strike has garnered a vast amount of information available from a myriad of sources. This has been further supplemented and corroborated by unprecedented input by a sitting US president. Historically speaking, Presidents have rarely chosen to provide real-time unedited input on a developing event. However, with the advent of social media, information dissemination has become a more effortless and somewhat more attractive means of communicating. Even legal experts like Mary Ellen O'Connell have admitted that President Trump's tweets, statements and remarks offer scholars an extraordinary amount of insight and information necessary for a legal and political assessment.⁶⁶⁸

Furthermore, this particular case study involves several controversial and contemporary issues—from targeted killings by drone to the law of preventative self-defence and the condition of imminence. Thus, the Soleimani strike will be studied in detail to determine whether this counter-terrorism mission violated international law. This will be achieved by examining whether or not the imminence requirement was sufficiently fulfilled to denote credibility and legitimacy to the US counter-terrorism programme as a whole. Subsequent discussions on the practice of killing foreign political figures by drone, the use of an unwilling third-party state as a battleground, and the issue of intentional intelligence obfuscation by US officials, will also be undertaken.⁶⁶⁹

For comprehension and clarity, this section will analyze events chronologically over the ten days which followed the US drone strike that killed Gen. Soleimani. As one might expect, not

⁶⁶⁸ Mary Ellen O'Connell, 'The Killing of Soleimani and International Law,' *European Journal of International Law*, 6 January 2020.

⁶⁶⁹ For the sake of brevity and relevance, tangential discussions on secrecy and assassination tactics were purposefully limited. To address the research objectives of this dissertation, the aforementioned literature was intentionally omitted in favour of greater analysis on the customary law of pre-attack self-defence and the Soleimani case study. It would have been irrelevant and frivolous to gloss over these topics in a superficial manner for the sake of inclusion if these would not serve a greater purpose for the objectives and trajectory of this project. Thus, this dissertation recognizes these related literatures, but has chosen to intentionally omit them as they did not serve a direct purpose to the topic being examined.

all events during the selected timeframe can or will be presented. Instead, the most relevant and publicized occurrences will be included if they can be reasonably understood to directly correlate with the initial drone strike that killed the Iranian General. Due to the dynamic nature of the situation, multiple sources of information were used to compile the following timeline. These included, but were not limited to: press releases from the US government, televised media interviews with officials and political analysts, breaking news stories—and of course, tweets. Wherever possible, policy documents and theoretical articles were used to substantiate these positions and claims further.

The Strike

It was a daring mission with a singular objective: eliminate Maj. Gen. Qasem Soleimani. This operation relied on meticulous planning, timing and coordination. For the CIA to track Soleimani's whereabouts, informants were needed to provide live intel, so spies and operatives in five countries were enlisted to ensure that things went according to plan.⁶⁷⁰ Ultimately, Soleimani was killed, and the mission was rendered a success. But was it as successful as the US claims?

For decades, Soleimani had been on the radar of various foreign intelligence agencies. He quickly became known as 'Iran's most powerful military commander and leader of its special-operations forces abroad.'⁶⁷¹ The US even designated Soleimani a terrorist in 2005, in response to his support for terror groups like Hezbollah, whom he funded and trained.⁶⁷² However, fearing an international and diplomatic backlash, most states, including the US, who had previously contemplated pursuing Soleimani, had instead opted against targeting a man who also held an

⁶⁷⁰ Several intelligence sources have confirmed that US operatives were planted in Syria, Iraq, Iran, Yemen, and Qatar in anticipation for the strike on Soleimani. Additionally, local Iraqi and Syrian cells were established to further facilitate the acquisition of intelligence.

⁶⁷¹ John Hudson et al., 'On the Day US Forces Killed Soleimani, They Targeted a Senior Iranian Official in Yemen,' *The Washington Post*, 10 January 2020.

⁶⁷² Jennifer Griffin and Lucas Tomlinson, 'Quds Force Commander Soleimani Visited Moscow, Met Russian Leaders in Defiance of Sanctions,' *Fox News Archive*, 06 August 2015 ('Soleimani was first designated a terrorist and sanctioned by the US in 2005 for his role as a supporter of terrorism.')

official government position. For killing an active foreign government official could most certainly start a war.⁶⁷³ After all, wars have started over much less.

Trump probably opted for the strike around the last day of December 2019. It appears to have been a somewhat whimsical decision. Reportedly two of President Donald Trump's closest advisers, both hawks, tried to dissuade him from ordering the military strike that killed Soleimani and brought the countries to the brink of war in January 2020, at least according to Bob Woodward, the most respected factual chronicler of Washington's beltway battles. South Carolina Republican Senator Lindsey Graham, one of the most robust Republican senators, reportedly warned Trump, 'Mr. President, this is over the top.' Characteristically discussing this on Trump's golf course, Lindsey likened this to going from 'playing \$10 blackjack to \$10,000-a-hand blackjack.' He added that with the election coming, he should not risk a 'major war.' Mick Mulvaney, Trump's chief of staff at the time, had made an 'urgent request' for Graham to intercede and had 'almost begged' Graham to find a way of stopping all this talk 'of hitting Soleimani.'⁶⁷⁴

It is hard to know what intelligence Trump was focusing on, but it was clearly SIGINT. Notoriously Trump was an indifferent consumer of intelligence, moving the Presidential Daily Brief from its traditional early morning slot to lunchtime and, in practice taking little interest. Trump told Lindsey, 'He deserves it' and added that 'We have all these intercepts showing that Soleimani is planning attacks.' But according to Graham, the intercepts were not especially compelling or unusual, so Graham pushed back, retorting that Soleimani has 'always been doing that.' Nevertheless, four days later, Trump ordered the strike. And despite Graham's reported reservations about the strike, he publicly supported the president's decision. Graham mixed private criticism with public support. Days later, he told Fox News that 'the intelligence was very strong that Soleimani was orchestrating chaos in Iraq at our expense and throughout the region,' adding that Trump was informed of these potential attacks, and so 'he acted.'⁶⁷⁵

⁶⁷³ Peter Baker et al., 'Seven Days in January: How Trump Pushed US and Iran to the Brink of War,' *The New York Times*, 11 January 2020.

⁶⁷⁴ Bob Woodward, *Rage* (New York: Simon and Schuster, 2020). See also Julian Borger, 'Woodward tells how allies tried to rein in 'childish' Trump's foreign policy', *The Guardian*, 11 Sept 2020.

⁶⁷⁵ Ibid.

Soleimani knew that a strike was a possibility. Some had argued that Soleimani revelled in his untouchable status; others claimed he had become more paranoid. Having both powerful allies and enemies, Soleimani took all possible precautions when travelling. He chose not to travel commercially, and as an Iraqi security source confirmed, even ‘avoided using his private plane because of rising concerns about his security.’⁶⁷⁶ His name was never listed on any manifest, and the airline crew rarely knew if he would be travelling on their aircraft in advance of him arriving.⁶⁷⁷ Perhaps this paranoia is what drove him to travel by private plane on the fateful night of January 3rd, 2020.⁶⁷⁸

It was 12:32 am local time when the Airbus A320 Cham Wings flight carrying Soleimani touched down at Baghdad International airport.⁶⁷⁹ He had travelled from Damascus, where his plane was delayed for two hours before finally taking off.⁶⁸⁰ Several intelligence contacts have confirmed that this delay was manufactured.⁶⁸¹ The MQ-9 Reaper drone used in the mission was scheduled to depart Al Udeid Airbase in Qatar earlier that night.⁶⁸² However, the AGM-114 Hellfire missiles onboard⁶⁸³ were reportedly experiencing system glitches, amongst other unforeseen technical issues. Creech Air Force Base in Nevada quickly coordinated with operatives at Damascus airport to manufacture a delay that would allow these problems to be resolved and the mission to proceed as planned—if only a few hours out of the original target window.

⁶⁷⁶ Anna Palmer and Jake Sherman, ‘Will Impeachment Matter in 2020?’ *Politico*, 10 January 2020.

⁶⁷⁷ Ken Dilanian and Courtney Kube, ‘Airport Informants, Overhead Drones: How the US Killed Soleimani,’ *NBC News*, 10 January 2020.

⁶⁷⁸ See also Reuters, ‘Exclusive: Informants in Iraq, Syria Helped US Kill Iran’s Soleimani—sources,’ *Reuters*, 09 January 2020.

⁶⁷⁹ See Suad al-Salhy, ‘Tracked, Targeted, Killed: Qassem Soleimani’s Final Hours,’ *Middle East Eye*, 04 January 2020; see also Agbada S. Agbada, ‘Is the Killing of Qasem Soleimani by the United States of America Legal Under International Law,’ *SSRN*, 07 January 2020.

⁶⁸⁰ Reuters, ‘Exclusive: Informants in Iraq, Syria Helped US Kill Iran’s Soleimani—sources.’

⁶⁸¹ For confidentiality, both sources have requested to remain anonymous as they are still active senior White House officials.

⁶⁸² Russ Read, ‘World’s Most Feared Drone: CIA’s MQ-9 Reaper Killed Soleimani,’ *The Washington Examiner*, 03 January 2020; see also Arab News Staff, ‘Reaper Drone Launched from Qatar Fired Missile That Killed Soleimani,’ *Arab News*, 05 January 2020.

⁶⁸³ See also Joshua Rhett Miller, ‘A Look at the Deadly Capabilities of the MQ-9 Reaper Drone That Took Out Gen. Qassem Soleimani,’ *The New York Post*, 03 January 2020.

Soleimani disembarked the plane and was quickly ushered into one of two awaiting vehicles.⁶⁸⁴ Like a huge carbon fibre vulture, the MQ-9 Reaper patiently and silently circled overhead. As soon as the CIA confirmed Soleimani's location, they provided this actionable intelligence to President Trump, who immediately authorized the strike.⁶⁸⁵ Once both vehicles had reached the access road at the exit of the airport lot, the drone locked onto both target vehicles.⁶⁸⁶ At 12:47 am, the MQ-9 Reaper fired two AGM-114 hellfire missiles—destroying the vehicles and engulfing them in flames. All ten occupants in the vehicles were killed on impact.⁶⁸⁷ Among the dead were Gen. Soleimani and Abu Mahdi al-Muhandis. Apart from being the Iraqi leader of the Kata'ib Hezbollah militia group, al-Muhandis also held the position of deputy commander of Iraq's Popular Mobilization Forces (PMFs).⁶⁸⁸ Despite not being the intended target, he had nonetheless been declared a terrorist by the US more than a decade earlier⁶⁸⁹—marking his death a bonus for the operation. Although it would take days before Soleimani's remains could be positively identified, operatives on the scene were able to tentatively confirm his identity by a ring found on a severed hand near the wreckage.⁶⁹⁰

⁶⁸⁴ See Gal Perl Finkel, 'The Killing of Soleimani and the Deal of the Century,' *The Jerusalem Post*, 16 February 2020.

⁶⁸⁵ In fact, President Trump had signed Soleimani's death warrant seven months prior to the drone strike—which raises further questions about the supposed imminence of the threat posed by the General. See Carol E. Lee and Courtney Kube, 'Trump Authorized Soleimani's Killing 7 Months Ago, with Conditions,' *NBC News*, 13 January 2020; and Lt. Col. James G. Zumwalt, 'The Unique Weapon That Took Out Soleimani,' *The Hill*, 20 February 2020.

⁶⁸⁶ Martin Chulov, 'A Defining Moment in the Middle East: The Killing of Qassem Suleimani,' *The Guardian*, 03 January 2020.

⁶⁸⁷ Agnes Callamard, 'The Targeted Killing of General Soleimani: Its Lawfulness and Why it Matters,' *Reiss Center on Law and Security at New York University School of Law*, 08 January 2020; see also Michael Crowley et al., 'US Strike in Iraq Kills Qassim Suleimani, Commander of Iranian Forces,' *The New York Times*, 02 January 2020; and Qassim Abdul-Zahra and Zeina Karam, 'Iran Vows Revenge for US Attack That Killed Powerful General,' *Associated Press*, 03 January 2020.

⁶⁸⁸ Callamard, 'The Targeted Killing of General Soleimani.'

⁶⁸⁹ US Department of the Treasury, 'Treasury Designates Individual, Entity Posing Threat to Stability of Iraq,' *United States Department of the Treasury*, 07 February 2009.

⁶⁹⁰ TOI Staff, 'Four Hellfire Missiles and a Severed Hand: The Killing of Qassem Soleimani,' *The Times of Israel*, 03 January 2020.

Immediately following the strike, investigators at the Baghdad airport apprehended all staff present at the time of the attack. Airline staff on the Cham Wings flight, which flew Soleimani to Baghdad, were also detained.⁶⁹¹ Agents from Iraqi national security then confiscated cell phones and held hours-long interrogations with every individual—regardless of whether they came into contact with Soleimani or his officials that night.⁶⁹² Every text, call and in-person contact was examined, analyzed and scrutinized. One employee recalled how his interrogation lasted upwards of 24 hours, during which time the agents ‘asked [him] a million questions’ before being cleared and allowed to return home.⁶⁹³

Iraq’s National Security Agency announced that they found ‘strong indications that a network of spies inside Baghdad Airport was involved in leaking sensitive security details.’ The head of the Popular Mobilization Forces (PMF), Falih al-Fayadh, who also served as the Iraqi National Security Advisor, led the investigation.⁶⁹⁴ Fayadh chose to liaise with Iranian proxies and Shiite militias, as their close ties with Soleimani would ensure that any potential suspicions about the investigation’s conduct would be quashed due to their involvement.⁶⁹⁵ According to another Iraqi security official, the ‘[i]nitial findings of the Baghdad investigation team suggest that the first tip on Soleimani came from Damascus airport.’⁶⁹⁶ More specifically, the Syrian cell at the Damascus airport was tasked with tracking Soleimani and noting the tail number of his plane, while the ‘job of the Baghdad airport cell was to confirm the arrival of the target and details of his convoy.’⁶⁹⁷ Throughout his life, Soleimani always had a hand in Syria—a life-long obsession with keeping Assad in power. In the end, it was spies from Damascus who had a hand in his death. Akin

⁶⁹¹ TOI Staff, ‘Network of Syrian, Iraqi Spies Said to Have Helped US kill Soleimani,’ *Times of Israel*, 09 January 2020.

⁶⁹² Omer Ozkizilcik, ‘Soleimani’s Death Proves the US Has Friends in Syria, But It’s Not the YPG,’ *TRT World*, 16 January 2020.

⁶⁹³ Michael Georgy and Brian Thevenot, ‘Informants in Iraq, Syria Helped US Kill Iran’s Soleimani: Report,’ *Reuters*, 10 January 2020.

⁶⁹⁴ See Dilanian and Kube, ‘Airport Informants, Overhead Drones.’

⁶⁹⁵ Ozkizilcik, ‘Soleimani’s Death Proves the US Has Friends in Syria.’

⁶⁹⁶ Georgy and Thevenot, ‘Informants in Iraq.’

⁶⁹⁷ Ryan Morgan, ‘Iraqi, Syrian Informants Helped US Track Soleimani Before Strike,’ *American Military News*, 10 January 2020.

to a Shakespearean tragedy, Syrian involvement in Soleimani's assassination was both poetic and tragic. Perhaps the old proverb is true, 'those whom you do not let die, will not allow you to live.'⁶⁹⁸

Shortly after the strike was confirmed as a success by the CIA, the US Department of Defence released an official statement. It noted in part that the drone 'strike [which killed Soleimani] was aimed at deterring future Iranian attack plans.' According to the announcement, Soleimani was targeted and killed because he 'was actively developing plans to attack American diplomats and service members in Iraq and throughout the region.' However, no reference was made to any 'imminent' threat evidence which would warrant such swift action.⁶⁹⁹

Hours later, from his Mar-a-Lago Resort, President Trump held a press conference on the Soleimani strike. He reaffirmed that that strike was 'aimed at stopping a war, not starting one.' Citing that the drone strike was necessary since 'Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel.' Later Trump claimed that the US caught Soleimani 'in the act and terminated him.'⁷⁰⁰ However, these assertions are inherently flawed since imminence is defined as something that has not yet occurred. So, stating that they 'caught [Soleimani] in the act' does not logically follow. Either a threat has materialized, or it has not. Trump later claimed that the drone strikes were *also* in response to the Hezbollah rocket attack on a military base in Kirkuk, Iraq, which killed a US contractor.⁷⁰¹ Once again, baffling the international community as to the true motivations behind the drone strike. Was it really to stop Soleimani from carrying out an impending attack? Or was it in response to an earlier Hezbollah strike? Or perhaps there was another unknown motive. Uncertainty in politics is unfavourable. In matters of international diplomacy, it can prove precarious.

⁶⁹⁸ Romanian proverb: 'Pe cine nu lași să moară, nu te lasă să trăiești.' Directly translated to English as: 'Whom you do not let die, will not allow you to live.'

⁶⁹⁹ US Department of Defence, 'Immediate Release: Statement by the Department of Defence,' *United States Department of Defence*, 02 January 2020 <<https://www.defense.gov/Newsroom/Releases/Release/Article/2049534/statement-by-the-department-of-defense/>>.

⁷⁰⁰ White House, 'Remarks by President Trump on the Killing of Qasem Soleimani,' *White House Press Office*, Mar-a-Lago Resort in Palm Beach, Florida, 03 January 2020.

⁷⁰¹ John Hudson et al., 'On the Day US Forces Killed Soleimani, They Targeted a Senior Iranian Official in Yemen,' *The Washington Post*, 10 January 2020.

Expectedly, Robert O'Brien, a US National Security Adviser, defended the president. He remarked that Trump was within his legal right to use drone strikes against Soleimani.⁷⁰² He bolstered this position by claiming that the strikes were in self-defence against the ongoing threat posed by Soleimani, and therefore justifiable under the 2002 Authority for Use of Military Force (AUMF) against Iraq.⁷⁰³ Like O'Brien, Mike Pompeo, the US Secretary of State, also expressed his support for the strike. However, when reporters pressured him further, he had difficulty answering questions about the imminence of the threat in question. Finally, he admitted that it was 'an intelligence-based assessment that drove [the] decision-making process.' Declining to discuss the purported imminence of the threat posed by Soleimani at the time of his death, Pompeo instead opted to say that Soleimani 'was actively plotting in the region to take actions, a big action, as he described it, that would have put dozens if not hundreds of American lives at risk.' In the days which followed, US government officials would be faced with a barrage of reporters' questions, scrutinizing every statement and assertion made by the US president and those in his administration.⁷⁰⁴

Unanswered Questions

The next day, reporters questioned Pompeo about a rumour that had begun circulating in Washington. They had heard that some senior government officials in different departments and agencies had become skeptical of the motivations behind the strike on Soleimani. They cited limited intelligence on the supposed imminence of the threat, which Pompeo vehemently denied. According to him, no 'skepticism' was present in the US government about the mission.⁷⁰⁵ He

⁷⁰² Rob Crilly, 'White House Says Trump Used Iraq War Authorization to Kill Qassem Soleimani,' *Washington Examiner*, 03 January 2020 ('The President exercised America's clear and inherent right of self-defence to counter this threat.') and ('It was a fully authorized action under the 2002 AUMF and was consistent with his constitutional authority as Commander-in-Chief to defend our nation and our forces against attacks like those that Soleimani has directed in the past and was plotting now.')

⁷⁰³ See Eugene Kiely, 'Trump Administration's Shifting Statements on Soleimani's Death,' *FactCheck.org*, 15 January 2020.

⁷⁰⁴ US Department of State, 'Secretary Michael R. Pompeo With John Berman of CNN New Day,' Interview Transcript, *US Department of State Archives*, 03 January 2020.

⁷⁰⁵ David Smith, 'Pompeo Scrambles to Defend Trump Claim Killing Suleimani will Save US Lives,' *The Guardian*, 05 January 2020.

further asserted that the government's intelligence assessment had concluded that Soleimani posed an ongoing risk to the US as long as he was alive. Thus, killing Soleimani 'reduced risks.'⁷⁰⁶ But where is this intelligence? And what risks were mitigated with the targeted killing of a senior Iranian official? The Trump administration's explanations have raised many questions for which there exist few answers. The next day would not shed any light on these concerns.

A joint press conference was scheduled to address intensifying public criticism on the Soleimani strike. US Defence Secretary Mark Esper, and the Chairman of the Joint Chiefs of Staff, General Mark A. Milley, led the session. Facing pressures by reporters, many of whom were left dissatisfied with Pompeo's answers just a day earlier, the topic of intelligence was quickly raised. Reporters once more posed questions to which they had not yet gotten a response. What intelligence was available? Who provided the intelligence? Was it credible, viable and actionable? Instead of receiving concise answers to these questions, Esper and Milley touted the line and attempted to obfuscate the situation. Milley concluded that the intelligence they had allowed them to know more than just Soleimani's history—but also his future.⁷⁰⁷ Unless Milley received his intelligence through a crystal ball, this statement does not do much in the way of providing proof for the necessity of the strike.

Hours later, during a press briefing at the Pentagon, Milley continued to reaffirm the White House position—noting that the US would have been 'negligent if [it] did not respond... [as] the threat of inaction exceeded the threat of action.'⁷⁰⁸ Ultimately, even those in Washington who take issue with how Soleimani was killed cannot say that his death was unwarranted. Mary Ellen O'Connell might challenge him on this claim. Since news of the strike became public, O'Connell

⁷⁰⁶ Conor Finnegan and Adia Robinson, 'World is Safer because of Iranian Commander's Death: Secretary of State Mike Pompeo,' *ABC News*, 05 January 2020 ('The intelligence assessment made clear that no action, allowing Soleimani to continue his plotting, his planning, his terror campaign created more risks than taking the action that we took last week. We reduced risks.')

⁷⁰⁷ Army Gen. Mark A. Milley during a joint press conference on Monday January 6th, 2020 ('We know his history. Importantly we knew his future.')

⁷⁰⁸ Gen. Mark A. Milley as quoted in *Ibid*; see also William James Stover, 'Preemptive War: Implications of the Bush and Rumsfeld Doctrines,' *International Journal on World Peace* (2004), pp. 3-14; Chris Bordelon, 'The Illegality of the US Policy of Preemptive Self-Defense Under International Law,' *Chapman Law Review*, 9 (2005), p. 111; and David B. Rivkin Jr, 'The Virtues of Preemptive Deterrence,' *Harvard Journal of Public Policy*, 29 (2005), pp. 85.

has been quite vocal that the customary right of preemptive self-defence does not permit assassinations. The United Nations Charter is quite clear on this matter, defining self-defence as an option only in response to an armed attack that has already taken place. Still, it seems as though US government officials, for the most part, remain unbothered by this legal qualm. An unnamed US State Department official has admitted that Soleimani's death would probably not prevent future violent terror plots from materializing, but it does prevent such plots from being as ingeniously orchestrated as they were under his command.⁷⁰⁹

Confronted with mounting suspicion and a general call for the release of information surrounding the strike, the Trump administration sent Gen. Mark Esper to deal with the press—again. It had been less than 24 hours since Esper had spoken at the joint press conference, but this time he had something more concrete to offer reporters. He announced that the Trump administration would share classified intelligence about the strike that killed Soleimani with the Gang of Eight. This elite group included Senate Majority Leader Mitch McConnell, Minority Leader Chuck Schumer, House Speaker Nancy Pelosi, Minority Leader Kevin McCarthy, and Reps. Adam Schiff and Devin Nunes, and Sens. Mark Warner and Richard Burr. The group would be collectively briefed on, as Esper put it, '[t]he exquisite intelligence that we are talking about that led to the decision to... strike Soleimani'.⁷¹⁰

The briefing was given on the afternoon of Tuesday, January 7th, 2020. Esper was quick to point out that only these eight individuals would be given this detailed intelligence brief. All other congressional members would 'not have access' to all classified intelligence—and would instead receive a less detailed brief the following day. Esper reaffirmed that the US did nothing wrong because Soleimani was not an innocent man, but a terrorist leader who 'was a legitimate

⁷⁰⁹ Kathy Gilsinan, 'It Wasn't the Law that Stopped Other Presidents from Killing Soleimani,' *The Atlantic*, 04 January 2020; see also Charles Pierson, 'Preemptive Self-Defense in an Age of Weapons of Mass Destruction: Operation Iraqi Freedom,' *Denver Journal of International Law and Policy*, 33 (2004), p. 150; Sophie Clavier, 'Contrasting Perspectives on Preemptive Strike: The United States, France, and the War on Terror,' *Maine Law Review*, (2006), p. 566; and Elaine M. Bunn, 'Preemptive Action: When, How, and to What Effect?' *Strategic Forum*. No. 200, *National Defense University*, 2003.

⁷¹⁰ US Department of Defence, 'Press Briefing by Secretary of Defence Mark T. Esper,' *US Department of Defence Archives*, 07 January 2020.

target...[whose] time was due.' Still, he admitted that the US 'should expect that [Iran] will retaliate in some way, shape or form,' either through their forces or proxies. Adding that the United States is 'prepared for any contingency...and will respond appropriately to whatever they do.'⁷¹¹

Hours later, at a press conference in Washington, Trump was questioned by reporters about what intelligence had led to his decision to kill Soleimani. At this point, the Gang of Eight had received their 'classified brief,' yet reporters were still struggling to piece together vague, confusing and often contradictory statements given by officials over the last few days. So, Trump began to list off the intelligence he had. The list was quite short, beginning and ending with: 'number one, I knew the past. His past was horrible. He was a terrorist.'⁷¹² A list with only one point. One irrational and incongruent point. Having a 'horrible past' does not warrant targeted killing by a drone strike in an unwilling third-party state. Moreover, how is 'horrible' defined? And what is the benchmark for being labelled a 'terrorist'? Scholars know all too well that the typology of a terrorist is quite malleable and contentious. Thus, Trump's answer raised more questions, which instigated further public outrage.

As promised a day earlier, remaining congressional members of both the US House of Representatives and the Senate were given their slightly less detailed brief. Many emerged from the meeting less than impressed. Some Democratic members immediately voiced their concern with the lack of intelligence presented during the briefing.⁷¹³ But they were not alone. It is also important to note that despite the seemingly ironclad unity of the Republican party, this intelligence brief divided even Trump's most loyal supporters. Republican Sen. Mike Lee of Utah,

⁷¹¹ Ibid, see also Timothy Kearley, 'Regulation of Preventive and Preemptive Force in the United Nations Charter: A Search for Original Intent,' *Wyoming Law Review* Vol.3 (2003), p. 663; Ryan Schildkraut, 'Where There Are Good Arms, There Must Be Good Laws: An Empirical Assessment of Customary International Law Regarding Preemptive Force' *Minnesota Journal of International Law*, Vol.16 (2007), p. 193; James J. Wirtz and James A. Russell, 'US Policy on Preventive War and Preemption,' *The Non-Proliferation Review* Vol.10, No.1 (2003), pp. 113-123; and Norman Menachem Feder, 'Reading the UN Charter Connotatively: Toward a New Definition of Armed Attack,' *New York University Journal of International Law and Policy*, Vol.19 (1986), p. 395.

⁷¹² White House, 'Remarks by President Trump and Prime Minister Mitsotakis of the Hellenic Republic Before Bilateral Meeting,' *White House Press Office*, 7 January 2020.

⁷¹³ Rebecca Kheel and Jordain Carney, 'Democrats 'Utterly Unpersuaded' by Evidence Behind Soleimani Strike,' *The Hill*, 08 January 2020.

who was visibly upset upon exiting the meeting, noted that it was overall ‘insulting and demeaning’... ‘probably the worst briefing I have ever seen, at least on a military issue, in the nine years I have served in the United States Senate.’ Republican Senator Rand Paul of Kentucky echoed his view, stating that ‘[w]hat [we] heard was less than satisfying.’⁷¹⁴

When reporters brought this to Esper’s attention, he reasoned that only the Gang of Eight received the full classified intelligence, and therefore ‘knew the whole picture.’ Thus, he misleadingly reasoned that the dissatisfaction with the intelligence brief was not caused by the intelligence presented, but rather by the intelligence omitted.⁷¹⁵ Unfortunately, Esper’s reasoning was quickly dismantled when days later, Adam Schiff, a member of the Gang of Eight, would call into question the credibility of the classified intelligence presented to his group and voiced his concerns regarding the ‘increasing prospect of war with Iran.’⁷¹⁶ His concerns would be proven valid as Mohsen Rezaei, a senior Iranian military officer in the Islamic Revolutionary Guard, had vowed ‘vigorous revenge’ against the US for killing Soleimani.⁷¹⁷

Since President Trump pulled out of the Obama-era Iran nuclear deal, animosity between the two states has steadily increased. Therefore, this has led many to believe that the potential for war with Iran is not an impossibility.⁷¹⁸ Knowing the political tension between their nations,

⁷¹⁴ Transcript, ‘Senators Lee and Paul Reaction to Iran Briefing,’ *C-SPAN*, 08 January 2020 <<https://www.c-span.org/video/?467942-7/senators-lee-paul-reaction-iran-briefing&start=719>>.

⁷¹⁵ Ryan Browne, ‘US Defense Secretary Pushes Back on Lawmakers Slamming Intel Briefing on Soleimani,’ *CNN*, 08 January 2020 (Intelligence is ‘restricted to the Gang of Eight, a group of top congressional leaders who are generally privy to sensitive information that the rest of Congress is not always briefed on.’) and (‘Most Members of Congress do not have access to the intelligence that I think was the most compelling.’)

⁷¹⁶ Press Release, ‘Chairman Schiff Statement on US Strike Killing Iranian General Soleimani,’ *US House of Representatives Permanent Select Committee on Intelligence*, Washington D.C., 03 January 2020 <<https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=899>>.

⁷¹⁷ Mohsen Rezaei via Twitter on 03 January 2020 (‘Martyr Lieutenant General Qassem Suleimani joined his martyred brothers, but we will take vigorous revenge on America.’)

⁷¹⁸ Fahri Aksüt, ‘Timeline: US-Iran Tension Since Collapse of Nuke Deal,’ *Ankara Anadolu Agency*, 08 January 2020.

Trump still engaged in a rather belligerent tit-for-tat with Iran, promising that he would strike key areas and cultural sites if Iran chose to escalate tensions any further.⁷¹⁹

In the White House foyer, mere hours after congressional members emerged perplexed by the brief they received—Trump chose to do what he arguably enjoys most: verbally attack another nation. Directly addressing Iran, Trump vowed to impose different sanctions on the regime and use its ‘great [US] military and equipment’ to get Iran to comply.⁷²⁰ Rather than use the time to clear up some issues voiced by congressional members, or answer pressing questions about the Soleimani strike, Trump chose to threaten Iran once more—this time with sanctions. All in all, it proved to be a somewhat ironic speech, seeing that the only foreign policy the US has had with Iran, after the dissolution of the Iran deal, was rooted in lethal drone strikes and sovereignty infringing clandestine operations.

That same afternoon, Kelly Craft, the US Ambassador to the UN, penned a letter to the United Nations in which she stated that the US’s decision to kill Soleimani was a clear form of self-defence—as set out under Article 51 of the Charter. Craft argued that the United States ‘has been a target of a series of escalating threats and armed attacks by the Islamic Republic of Iran,’ and these threats only further demonstrate that the US acted in adherence to the UN Charter and well within their right of state self-defence.⁷²¹

Just like the US, Iran also sought to justify its actions to the United Nations. So, Iranian Foreign Minister Mohammad Javad Zarif wrote a letter to the President of the Security Council

⁷¹⁹ Trump’s threat to target Iranian cultural sites violates international law; see Agnes Callamard, ‘The Targeted Killing of General Soleimani: Its Lawfulness and Why it Matters,’ *Reiss Center on Law and Security at New York University School of Law*, 08 January 2020.

⁷²⁰ White House, ‘Remarks by President Trump on Iran,’ *White House Press Office*, 08 January 2020 (‘[t]he civilized world must send a clear and unified message to the Iranian regime: Your campaign of terror, murder, mayhem will not be tolerated any longer. It will not be allowed to go forward...[t]he fact that we have this great military and equipment, however, does not mean we have to use it. We do not want to use it. American strength, both military and economic, is the best deterrent.’)

⁷²¹ Kelly Craft, ‘Letter to the President of the United Nations Security Council,’ *United States Mission to the United Nations*, 08 January 2020. Accessed at <<https://assets.documentcloud.org/documents/6609717/Art-51-Letter.pdf>>.

and Secretary-General of the United Nations. He claimed that Iran not only acted in self-defence as dictated in Article 51 of the UN Charter, but it had done so proportionately.⁷²² Zarif concluded the letter by noting that Iran does ‘not seek escalation or war’ but will defend itself against any aggression.⁷²³ So, while attempting to justify their drone strike within existing international law, Iran began following through on its promise to retaliate

Operation Shahid Soleimani

The killing of Soleimani made Iran look defenceless against US aggression, so the regime sought to reaffirm their power—especially in the eyes of their citizens—by vowing vengeance against the United States for the killing of Soleimani. Respect, perceived power and an unchallenged reputation are all vitally important to the Iranian regime. So much so that the ‘Achilles’ Heel of the Islamic regime [became]... its dignity in the eyes of its subjects.’⁷²⁴

Fueled by outrage and public calls for revenge, ‘Operation Martyr Soleimani’ was initiated. According to Gen. Amir Hadjizadeh, IRGC Air Force commander, ‘[t]he proper revenge for the blood of (Soleimani and the other persons killed in the US strike) is the expulsion of the Americans from the region.’⁷²⁵ It began with Iran launching twenty-two missiles on two joint-US bases in Iraq—one in Ain al-Assad Base and another in Erbil.⁷²⁶ The Iranian missile strikes were, according to Hadjizadeh, only the beginning. Although Iran had only fired 13 missiles, he boasted that it was ‘prepared to fire several hundred more in the first hour or two after the strike’ if the situation had escalated. According to the general, Iran planned for a ‘limited campaign’ which would, at most, last a week. It turns out this was somewhat of an exaggeration as Operation Shahid Soleimani only

⁷²² Majid Takht Ravanchi, ‘Letter No.13259 to the United Nations, Permanent Mission of the Islamic Republic of Iran to the United Nations,’ *PBS News*, 08 January 2020 <<https://pbs.twimg.com/media/ENzf2JzX0AABPCD.png>>.

⁷²³ Ravanchi, ‘Letter No.13259 to the United Nations, Permanent Mission of the Islamic Republic of Iran to the United Nations.’

⁷²⁴ Uzi Rubin, ‘Operation Shahid Soleimani: Iran’s Revenge,’ *Begin-Sadat Center for Strategic Studies, Ramat Gan*, Israel: Bar-Ilan University, February 2020, p. 19.

⁷²⁵ IRGC Air Force commander as quoted in Ibid, pp. 16-17.

⁷²⁶ Al Jazeera, ‘Iran Launches Missile Attacks on US facilities in Iraq,’ *Al Jazeera*, 08 January 2020; see also Ahmet Berk Binkaya, ‘Causes and Effects of the Assassination of Qasem Soleimani: A Political Perspective,’ *The Copernicus Journal of Political Studies*, Vol.1 (2020), pp. 159-166.

lasted a day. Iran claimed it was ‘to preserve missile stockpiles for later action,’ but the likelihood was that the action was more an attempt to save face than anything else.⁷²⁷

Yet, in the days following the Iranian retaliatory strikes, diplomatic relations with the United States were tense, unfocused and uncertain. It also did not help that US statements about these retaliatory strikes seemingly differed by the hour and failed to mention any concrete information about potential damage or injuries incurred. In press briefings, Trump downplayed severe brain injuries suffered by US soldiers as ‘headaches.’ He also failed to mention that one of the missiles severed critical communication lines with Creech Air Force Base, causing operators to lose control of seven predator drones that were armed, and in mid-flight. These facts only became public after soldiers on base explained them to local reporters. It seems as though the Pentagon, and even US forces in Iraq, were unaware of the CIA’s intention to kill Soleimani at the time and in the manner it did. As such, they were left unprepared for the fallout, which ensued.⁷²⁸

Hadjizadeh maintained that Iran’s Operation Shahid Soleimani was a brilliant success. He claimed that the United States was a ‘paper tiger,’ a bully, which only attains success when it attacks weaker nations. Hadjizadeh noted that Operation Shahid Soleimani was not only a matter of vengeance. It was ‘merely the first instalment in a comprehensive operation that will eventually expel the US from the entire region, from Afghanistan in the east all the way to North Africa in the West.’ For this to be achieved, Iran planned to request help from its allies and proxies in Lebanon, Iraq and Yemen. Countries currently hosting the US military will need their political officials to request that they leave, then, ‘local militias will take over and drive the Americans out.’⁷²⁹ It seems like a logical plan, but this has yet to take form at the time of writing. Tehran may have stopped short of pursuing this plan, but this does not mean that it did not succeed in its objectives.

⁷²⁷ IRGC Air Force commander as quoted in Rubin, ‘Operation Shahid Soleimani: Iran’s Revenge,’ pp. 16-17; see also Maysam Behraves, ‘Qassem Soleimani’s Assassination and Iran’s Pledge of Severe Revenge,’ *Inside Arabia*, (2020); and Ahmed Salah Hashim, ‘Iranian General’s Killing: How Will Iran Respond?’ *RSIS Commentaries*, 005-20 (2020).

⁷²⁸ Ibid, pp. 17-19; see also Akpan Nse Etim and Nebeife Chigozie Joseph, ‘After Soleimani: Iran’s Proxy Networks and Its Implications for Stability in the Persian Gulf,’ *Interdisciplinary Journal of African & Asian Studies*, Vol.6, No.2, (2020).

⁷²⁹ Ibid, pp. 17-18.

If America is a paper tiger, then so was the Iranian operation to avenge Soleimani – indeed puzzlingly so. As Rubin has recognized, Operation Shahid Soleimani was ultimately more of a demonstration than a decisive strike, which did nothing to deter the US from launching future attacks against the regime or its interests. What it did do, on the other hand, was reaffirm its self-respect in the eyes of its citizens and regional allies—perhaps quite courageously, given the difference in military capabilities between the two states. This operation also had another, perhaps more subtle, victory. While the US was domestically dealing with the fallout and engaging a deceptive, contradictory and aggressive messaging, Iran exhibited a robust and united front. From the position of ‘the cognitive battlefield,’ Rubin concluded that, ‘the US administration... showed a lack of control over information... [which] stood in sharp contrast to the focused, fluent, and forceful messaging of the Iranians.’⁷³⁰

Modern conflicts are fought on multiple fronts—the most important of which are the physical and cognitive battlefields. Public opinion, perceptions of legality, operational legitimacy and international support are just a few of the factors which are fought over on the latter front.⁷³¹ Thus, it is this cognitive battlefield that ultimately decides the victor. The United States may have tactically won on the physical battlefield, but the resulting political fallout may have cost them more than they gained strategically. Nevertheless, it has to be conceded that the substantial escalation that even Trump’s closest friends, including Graham, warned him of, did not occur. Perhaps this was because Iranian eyes were soon diverted elsewhere.

Voiceless Victims

⁷³⁰ Ibid, p. 20.

⁷³¹ See Richard A. Falk, ‘What Future for the UN Charter System of War Prevention?’ *The American Journal of International Law* Vol.97, No.3 (2003), pp. 590-598; Ramesh Thakur, ‘Law, Legitimacy and United Nations,’ *Melbourne Journal of International Law*, Vol.11 (2010); Thomas G. Weiss, *What's Wrong with the United Nations and How to Fix it*, (John Wiley & Sons, 2016); Shashi Tharoor, ‘Why America Still Needs the United Nations,’ *Foreign Affairs*, (2003), pp. 67-80; Vaughan Lowe, et al., eds. *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945*, (Oxford: Oxford University Press, 2010); and Simon Chesterman, ‘Reforming the United Nations: Legitimacy, Effectiveness and Power After Iraq,’ *SYBIL*, (2006), pp. 59.

Although no Americans died due to ‘Operation Shahid Soleimani,’⁷³² there were other unintentional victims that day. After the twenty-two missiles hit their intended target, the Iranian military was on high alert—expecting some form of American retaliation or military engagement. Tragically, this increased anxiety, tension and uncertainty would claim its first victim.⁷³³ The Iranian military misidentified a Ukrainian passenger jet as a potential US cruise missile flying over Tehran and intercepted it. In doing so, they killed all 176 passengers on board.⁷³⁴ In one irreversible moment, that plane and its passengers became the first victim. In the first few days following the plane crash, Iran blamed engine failure and mechanical issues. But as international calls for investigation mounted, and amateur video of a large fireball in the sky began circulating on social media, the regime found it ever more challenging to keep up the political smokescreen.

Iraq was undoubtedly the second victim. As Osama Bin Javaid, a reporter for Al Jazeera, pointed out, Iraq’s worst fear had materialized. It had once again become a ‘theatre of confrontation between world powers’—an *unwilling* battlefield.⁷³⁵ A place where nations carry out dangerous clandestine operations, exercise their military might and engage in aggressive revenge missions. The whole region held its breath, with Iraq especially fearful of what new attacks might play out in its territory.

Pressured by his ministers, Iraq’s caretaker Prime Minister Abdel Abdul-Mahdi, called Mike Pompeo to ask the US to pull out its troops, citing that US forces had killed Soleimani by entering Iraq and its airspace without permission.⁷³⁶ Pompeo declined the request. However, it should be mentioned that in 2008, the US had formally agreed to respect Iraqi sovereignty. The

⁷³² BBC World News Staff, ‘Iran Missile Attack: Did Tehran Intentionally Avoid US Casualties?’ *BBC World News*, 08 January 2020 < <https://www.bbc.com/news/world-middle-east-51042156>>.

⁷³³ This dissertation is written in memory of Mansour Esfahani and Marzieh Foroutan who were tragically killed onboard the downed Ukrainian flight.

⁷³⁴ Ben Gilbert, ‘Iran’s Military Knew It Accidentally Shot Down A Passenger Plane Moments After It Happened, And A Stunning New Report Details How It Was Covered Up—Even from Iran’s President,’ *Business Insider*, 26 January 2020.

⁷³⁵ Al Jazeera Staff, ‘Iran Launches Missile Attacks on US Facilities in Iraq,’ 08 January 2020 (‘[t]he worst expectation that Iraq had, that it will again become a theatre of confrontation between world powers seems to be coming true again... as Iraq was the place where the US chose to take out Soleimani and Iraq again is the place where the Iranians chose to attack US forces’)

⁷³⁶ Al Jazeera Staff, ‘US Rejects Iraq Request to Discuss Troop Withdrawal, US-Iran Escalation,’ *Al Jazeera News*, 10 January 2020.

understanding was that the US would cease using Iraqi territory as its ‘point for attack’ against other countries.⁷³⁷ With the strike on Soleimani, the Iraqi Prime Minister rightfully argued that the US violated the deal’s terms. It had not even been four months since, in August of 2019, Abdul-Mahdi, with direction from Defence Ministry spokesperson Yahya Rasool, announced that the US would need permission from Iraq before flying in its airspace or dropping bombs. Not an unreasonable request, seeing that Iraq is a sovereign state.⁷³⁸

Iraq, like the US, is a nation-state whose sovereignty is protected under international law. It is also a member state at the UN, has defined borders, and thus implied authority over activities within its borders. The US has become all too comfortable in combating terrorism in the Middle East that it has forgotten that the countries in that region have never forfeited their sovereign rights to its government. The US can lawfully target a group like the Islamic State because it is a self-proclaimed non-state caliphate with no borders, no UN membership, no international recognition or protection by its laws. As such, it has no sovereignty to claim nor forfeit. Still, this does not give any country free rein to chase IS, or any target for that matter, insouciantly with complete disregard for international laws and individual state sovereignty. The Iraqi government warned in late 2019 that those who failed to acquire this permission would be ‘deemed to be hostile aviation and handled immediately by our air defences.’⁷³⁹

That did not exactly happen, for it was less than six months after Abdul-Mahdi’s statement that Iraq would be dealing with the fallout of a targeted drone assassination on its territory, and a fear that future armed assaults between Iran and the United States would continue to take place within their borders.⁷⁴⁰ Following the unproductive call between Abdul-Mahdi and Pompeo, Iraq’s

⁷³⁷ Archit Shukla, ‘The Killing of General Soleimani—A Blatant Violation of International Laws,’ *The Jurist: University of Pittsburgh Press*, 14 April 2020.

⁷³⁸ Kareem Khader, ‘Iraq Parliament Speaker Says US Strike Was “Flagrant Violation of Sovereignty”,’ *CNN*, 03 January 2020 (Abdul-Mahdi also added that ‘exclusive approval of the General Commander of the Iraqi Armed Forces, or his authorized representative’ would be required by all those wishing to fly in Iraqi airspace)

⁷³⁹ Tom O’Connor, ‘US Now Needs Iraq’s Permission to Drop Bombs There,’ *Newsweek-World News*, 16 August 2019.

⁷⁴⁰ The author recognizes that these exchanges may have been orchestrated shows of defiance for public consumption. Yet, for the purpose of providing the perspective of all relevant parties, this exchange was included. It is important to note that the Iraqi government cannot run Iraq without

top Shia leader, Grand Ayatollah Ali al-Sistani, condemned the US's actions for confronting Iran on Iraqi soil. He argued that it would be 'plunging an already war-ravaged country and the wider middle east into deeper conflict.' Al-Sistani argued that it was Iraqi's who would suffer from this potential escalation—and argued that 'no foreign powers should be allowed to decide Iraq's fate.' It should be noted that Al-Sistani, 'who wields huge influence over public opinion in Iraq, only weighs in on politics during times of crisis, and is seen as a voice of moderation.' Despite his calls for peace and non-intervention, neither Iran nor the US has heeded the call.⁷⁴¹

It was now January 10th, exactly one week after the Soleimani strike. Still, no answers. Instead, there was growing outrage about the details, which had slowly become public over the last week. The only clear thing was that the US had invaded sovereign Iraqi airspace to carry out the strike on Soleimani.

Mounting Suspicions

In an interview with Fox News, Mike Pompeo reaffirmed that Soleimani posed an imminent threat. When questioned further about what that 'imminent threat' entailed, Pompeo admitted that the administration knew Soleimani was dangerous but had no way of knowing when or where a threat might materialize. He was quoted as saying that '[t]here is no doubt that there were a series of imminent attacks that were being plotted by Qasem Soleimani. We do not know precisely when—and we do not know precisely where—but it was real.' This statement fueled further media backlash and growing pressures to clarify the 'threats.'⁷⁴²

During a White House event, Trump announced the *real* reason behind the US government's decision to kill Soleimani. According to Trump, Soleimani was involved in a terror plot to blow up the US embassy in Baghdad.⁷⁴³ When prompted to provide more details on the

US air power, so it cannot give orders in this manner, and would not do so as this would ultimately be counterproductive in the long run.

⁷⁴¹ O'Connor, 'US Now Needs Iraq's Permission to Drop Bombs There.'

⁷⁴² Kevin Breuninger, 'Mike Pompeo: We Don't Know Precisely When or Where Soleimani Planned to Attack,' *CNBC*, 10 January 2020.

⁷⁴³ White House, 'Remarks by President Trump on Proposed National Environmental Policy Act Regulations,' *White House Press Office*, 09 January 2020 ('because [he was] looking to blow up

supposed embassy plot, Trump declined. Instead, he said the evidence was ‘obvious,’ citing the protests in Iran's streets as evidence.⁷⁴⁴ Hours later, at a political rally in Ohio, Trump stated that multiple embassies were the intended targets—not just in Baghdad.⁷⁴⁵ In light of these new off the cuff revelations, several Democratic senators signed a petition demanding that the Office of the Director of National Intelligence provide them with the intelligence which corroborates President Trump’s claim that Soleimani was planning an imminent attack.⁷⁴⁶

In an interview with Laura Ingraham, President Trump made another bombshell revelation. He claimed that not one but ‘four US embassies’ would have been targeted had his administration not eliminated Soleimani.⁷⁴⁷ Had he not been the President of the United States, his claims would not have been given much thought, especially without any proof to corroborate them. Yet, given his position, these assertions were given a certain credence level—if only illusory. Still, in the absence of any concrete evidence to substantiate these claims, the international community found it difficult to accept Trump’s version of events.⁷⁴⁸ Iran, in particular, was growing furious with the

our embassy [in Baghdad]. We also did it for other very obvious reasons. Somebody died—one of our military people died. People were badly wounded just a week before. And we did it. And we had a shot at him, and I took it, and that show was pinpoint accurate.’)

<<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-proposed-national-environmental-policy-act-regulations/>>

⁷⁴⁴ Ibid (‘No, I think it was obvious, if you look at the protests.’)

⁷⁴⁵ Shane Harris, Josh Dawsey and Seung Min Kim, ‘Trump Now Claims Four Embassies Were Under Threat from Iran, Raising Fresh Questions About Intelligence Reports,’ *Washington Post*, 10 January 2020 (‘Soleimani was actively planning new attacks and he was looking very seriously at our embassies and not just the embassy in Baghdad.’)

⁷⁴⁶ US Senate, ‘Van Hollen Joins Murphy, Democratic Senators in Requesting Classified Briefing on Evidence Underlying ‘Imminent Attacks’ on US Embassies,’ *US Senate Press Release*, 14 January 2020 <<https://www.vanhollen.senate.gov/news/press-releases/van-hollen-joins-murphy-democratic-senators-in-requesting-classified-briefing-on-evidence-underlying-imminent-attacks-on-us-embassies>>

⁷⁴⁷ Alex Pappas, ‘Trump Tells Fox News' Laura Ingraham “Four Embassies” Were Targeted in Imminent Threat from Iran,’ *Fox News*, 10 January 2020 (Trump: ‘I can reveal that I believe it would have been four embassies. And I think that probably Baghdad already started. ...Baghdad certainly would have been the lead. But I think it would have been four embassies, could have been military bases, could have been a lot of other things too. But it was imminent, and then all of a sudden, he was gone.’)

⁷⁴⁸ See for example Ryan Schildkraut, ‘Where There Are Good Arms, There Must Be Good Laws: An Empirical Assessment of Customary International Law Regarding Preemptive Force,’ *Minnesota Journal of International Law*, Vol.16 (2007), pp. 193; and Mark Totten, ‘Preemption and the War on Terror: Morality, law, and the Use of Force,’ (2006), pp. 1379-1379.

actions taken by the US government. Threats, calls for ‘revenge’ and protests in the streets put the US on high alert for the potential of escalated violence between the two nations. To curb this risk, the Trump administration settled on the way to control and suppress Iran from afar—by imposing the sanctions the President had alluded to just days earlier.

The US Secretary of State Mike Pompeo, and the Secretary of the Treasury, Steven Mnuchin, announced in a joint briefing that sanctions on Iran would be applied to force the regime into behaving like a ‘normal nation.’⁷⁴⁹ However, during the question period, reporters were more interested in the Soleimani drone strike's motivations than the proposed sanctions announced in the briefing. Attendees intensely questioned and criticized the lack of intelligence behind the strikes and demanded to hear the administration’s imminence definition. Unprepared and visibly anxious, Secretary Pompeo felt pressured to defend once more the drone strike that killed Soleimani. In the end, he argued, in part, that the evidence to prove the imminence of an attack was irrelevant.⁷⁵⁰ Admitting that although the administration did not ‘know exactly which day it would have been executed,’ Soleimani was involved in planning an imminent terror plot against the United States. Pompeo then attempted to redefine imminence as something that might put Americans at risk.⁷⁵¹ This definition is inherently problematic as it could justify any military action—as risk is somewhat of a subjectively interpreted condition. Nevertheless, Pompeo concluded by saying that the government ‘would have been culpably negligent’ had they not killed Soleimani and instead allowed this attack to have materialized.

⁷⁴⁹ White House, ‘Press Briefing by Secretary of State Mike Pompeo and Secretary of the Treasury Steven Mnuchin on Iran Sanctions,’ *White House Press Office*, 10 January 2020.

⁷⁵⁰ See Dominika Svarc, ‘Redefining Imminence: The Use of Force Against Threats and Armed Attacks in the Twenty-First Century,’ *ILSA Journal of International and Comparative Law*, 13 (2006), pp. 171; Gregory E. Maggs, ‘The Campaign to Restrict the Right to Respond to Terrorist Attacks in Self-Defense Under Article 51 of the UN Charter and What the United States Can Do About It,’ *Regent Journal of International Law*, Vol.4 (2006), pp. 149; Francis Grimal, *Threats of Force: International Law and Strategy*, (Routledge, 2013); and Tom Ruys, Olivier Corten, and Alexandra Hofer, eds., *The Use of Force in International Law: A Case-based Approach* (Oxford: Oxford University Press, 2018).

⁷⁵¹ See also Tyler Wall and Torin Monahan, ‘Surveillance and Violence from Afar: The Politics of Drones and Liminal Security-scapes,’ *Theoretical Criminology* Vol.15, No.3 (2011), pp. 239-254.

Unsatisfied with the briefing information, reporters tried their luck with a different approach. They asked Pompeo about Trump's recent remarks concerning the plot headed by Soleimani to 'blow up' four US embassies. Pompeo asserted that the US government did have 'specific information on an imminent threat, and those threats included attacks on US embassies.' Questioned further about the inconsistencies in his use of the term 'imminent,' particularly after previously declaring that they did not know precisely when or where an attack would materialize, Pompeo offered a rather annoyed response: 'Those are completely consistent thoughts! I did not know exactly which minute. We do not know exactly which day it would have been executed. But it was very clear: Qasem Soleimani himself was plotting a broad, large-scale attack against American interests.'⁷⁵² If so, where is the proof?⁷⁵³

On the other side of the world, Iran would be facing similar public backlash—but for a much different reason. Two days after the downing of Ukrainian Airlines Flight 752, Iran finally conceded that human error resulted in a missile being launched, which intercepted the plane and brought it down.⁷⁵⁴ Iranian President Hassan Rouhani admitted on Twitter that the plane's downing was a 'disastrous mistake' that they 'completely regret.'⁷⁵⁵ However, as Mohamad Javad Zarif, Iran's Foreign Minister points out, Iran may not be the only one to blame for this accident. Zarif noted that it was a mix of both 'human error at the time of crisis caused by US adventurism that led to disaster.'⁷⁵⁶ Trump initiated hostilities, and Iran reciprocated, resulting in a fog of war that claimed innocent lives. Following this public admission of guilt, thousands of Iranians took to the

⁷⁵² White House, 'Press Briefing by Secretary of State Mike Pompeo and Secretary of the Treasury Steven Mnuchin on Iran Sanctions.'

⁷⁵³ See Michael Poznansky, 'Revisiting Plausible Deniability,' *Journal of Strategic Studies*, (2020), pp. 1-23; Victor Marchetti, John D. Marks, and Melvin L. Wulf, *The CIA and the Cult of Intelligence* (New York: Knopf, 1974); Roger Z. George, *Intelligence in the National Security Enterprise* (New York: 2020); Harry Rositzke, *The CIA's Secret Operations: Espionage, Counterespionage, and Covert Action* (London: Routledge, 2019); and Chris Whipple, *The Spymasters: How the CIA Directors Shape History and the Future* (New York: Simon and Schuster, 2020).

⁷⁵⁴ Farnaz Fassihi, 'Iran Says It Unintentionally Shot Down Ukrainian Airliner,' *New York Times*, 10 January 2020.

⁷⁵⁵ Hassan Rouhani via Twitter on 10 January 2020.

< <https://twitter.com/HassanRouhani/status/1215856679423823872?s=20>>.

⁷⁵⁶ Javad Sarif via Twitter on 10 January 2020.

<<https://twitter.com/JZarif/status/1215847283381755914?s=20>>.

streets to protest the regime.⁷⁵⁷ Unexpectedly, it was the Iranians who would be first to admit guilt. The US was still sticking to their guns⁷⁵⁸—claiming that the strike on Soleimani was both morally and legally defensible.

No Evidence

If four US embassies were targeted by Soleimani, as Trump and his administration have claimed, then most likely, the Gang of Eight would have been informed of this during their classified briefing only days earlier. It was now January 12th, so the chances of obtaining new information were slowly diminishing with each passing day. The Trump administration had either succeeded at keeping pertinent intelligence under lock and key—or no such intelligence existed.

Adam Schiff, a member of the Gang of Eight and the chairman of the House Intelligence Committee, appeared in an interview on CBS's 'Face the Nation.' He confirmed that there was *no mention* of embassy targets, much less four targets, in the detailed intelligence briefings given to the Gang of Eight.⁷⁵⁹ Margaret Brennan, the host of 'Face the Nation,' later questioned Esper why the Gang of Eight was not given the information about embassy targets in their classified intelligence briefings. Esper said it was because he did not have any intelligence that indicated that embassies were to be targeted. He furthermore claimed that Trump might have been merely

⁷⁵⁷ David Lao, 'Protest Erupts After Iran Admits to Shooting Down Ukrainian Aircraft,' *Global News Canada*, 11 January 2020 <<https://globalnews.ca/news/6398794/iranian-protest-downed-ukrainian-aircraft/>>.

⁷⁵⁸ This was mostly driven by President's Trump refusal to provide evidence regarding the imminence of the strike. For similar historical examples see Alessandro Nai, Ferran Martínez Coma, and Juergen Maier, 'Donald Trump, Populism, and the Age of Extremes: Comparing the Personality Traits and Campaigning Styles of Trump and Other Leaders Worldwide,' *Presidential Studies Quarterly* Vol.49, No.3 (2019), pp. 609-643; Michael Espinoza, 'Trump and the GOP: A Marriage of Convenience?' *Political Insight* Vol.9, No.4 (2018), pp. 22-26; Roger Stone, *The Making of the President 2016: How Donald Trump Orchestrated a Revolution* (New York: Simon and Schuster, 2017); Joel Pollak and Larry Schweikart, *How Trump Won: The Inside Story of a Revolution* (New York: Simon and Schuster, 2017); and Jeff Manza and Ned Crowley, 'Ethnonationalism and the Rise of Donald Trump,' *Contexts* Vol.17, No.1 (2018), pp. 28-33.

⁷⁵⁹ Transcript, 'Rep. Adam Schiff on 'Face the Nation,' *CBS News*, 12 January 2020. <<https://www.cbsnews.com/news/transcript-rep-adam-schiff-on-face-the-nation-january-12-2019/>>.

expressing his belief that there ‘could have been attacks against additional [US] embassies’ without the intelligence to support this claim.⁷⁶⁰

Brennan shot back at Esper, pointing out that the president’s belief ‘sounds more like an assessment than a specific, tangible threat with a decisive piece of intelligence.’ Despite this lack of evidence, Esper nonetheless managed to reiterate his support for the president, noting that he shared the president’s belief on the matter, a view which he not only trusted but took as substantive evidence of the threat in question.⁷⁶¹ This illogical reasoning is akin to an—‘I believe, he believed’ scenario...wherein speculations and nontruths are relied upon in the absence of facts. Trump’s choice of language may indicate this, but Esper’s continued support for the president’s statements is alarming in the absence of any proof.

As US Defence Secretary, one would expect Esper to have a thorough knowledge of the intelligence behind the events leading up to, and following, the strike on Soleimani. If he did not know of any threat to any US embassy, then who else did? Where is the evidence to support Trump’s claim of a plot to ‘blow up’ not one, but four embassies? These shifting statements and explanations have damaged the credibility and legitimacy of the US operation in the eyes of its citizens and the international community. Rob Goodman, Assistant Professor of Politics at Ryerson University, added that the Trump administration’s shifting explanations somewhat mirrors the claims of ‘imminent threat’ used by the George W. Bush administration in 2003 to justify launching the global war against terrorism. The problem is that Bush claimed imminence without proof. There were never any weapons of mass destruction found to justify the 2003 invasion of Iraq. Might the Trump administration’s strike on Soleimani be a similar example of claiming imminence without proof? In 2003, Americans did not question the administration as they were still grappling with the aftermath of 9/11. Fast forward to 2020, where the American public is much more war-weary⁷⁶² and hesitant to enter into another international armed conflict. Goodman

⁷⁶⁰ Transcript, ‘Defence Secretary Mark Esper on ‘Face the Nation,’ *CBS News*, 12 January 2020. <<https://www.cbsnews.com/news/transcript-mark-esper-on-face-the-nation-january-12-2019/>>.

⁷⁶¹ Ibid (Esper: ‘I didn’t see one with regard to four embassies. What I am saying is I share the President’s view that probably—my expectation was that they were going after our embassies. The embassies are the most prominent display of American presence in a country.’)

⁷⁶² It should be noted that at the time of writing, no data is available from which to analyze the American public’s response to the Soleimani strike. Despite the Trump administration’s attempt

argued that a change in rhetoric is insufficient to appease the public. Instead, the Trump administration's approach to foreign policy is what needs attention.⁷⁶³

It had been ten days since the Soleimani strike, and no further information had been provided to the public. After countless shifting statements by US government officials, President Trump finally set the 'truth' straight—on Twitter. However, instead of addressing the questions raised by reporters and prominent US officials, Trump decided to attack those making these inquiries. He insulted reporters by calling them 'fake news media' and accused Democratic congress members who had raised concerns about the intelligence briefs they received as being in alliance with fake news outlets. Still, the most concerning part of the tweet came when Trump disregarded the attempt by Democrats to determine whether the Soleimani strike was imminent. Instead, he claimed that his team 'agreed' over the fact that it was imminent, and that should be enough proof. He then sought to reason that if no proof of imminence was ever discovered, Soleimani's 'horrible past' should be sufficient reason to warrant his death.⁷⁶⁴ In essence, Trump affirmed that proof of imminence or plot of attack does not matter because Soleimani's 'horrible past' was enough to justify killing him.⁷⁶⁵

Jon Lindsay, Assistant Professor at the University of Toronto's Munk School of Global Affairs and Public Policy, noted that '[i]t's hard to know what the real reason [for killing Soleimani] is because we have heard several different reasons provided to both the public and to

to paint the strike as 'war stopping,' rather than 'war starting,' the public nonetheless voiced their disdain for the strike in a myriad of ways—from street protests to trending social media tags regarding the strike. Thus, Goodman's view and the comparison contained within his article was therefore largely predicated upon his appraisal of public sentiment.

⁷⁶³ Maham Abedi, 'Soleimani Killing: A Look at the Trump Administration's Evolving Explanations,' *Global News Toronto*, 13 January 2020 (Goodman added that: '[i]t sounds as if no one in the Pentagon or the US armed forces ever imagined that the president would select the option of escalating conflict to this height. And the fact that he did it sent a lot of people scrambling...I just think that is no way to make foreign policy.')

⁷⁶⁴ Donald J. Trump via Twitter on 13 January 2020.

⁷⁶⁵ White House, 'Remarks by President Trump and Prime Minister Mitsotakis of the Hellenic Republic Before Bilateral Meeting.' ('The Fake News Media and their Democratic Partners are working hard to determine whether or not the future attack by terrorist Soleimani was 'imminent' or not, & [sic] was my team in agreement. The answer is both a strong YES., [sic] but it doesn't really matter because of his horrible past.')

Congress.’⁷⁶⁶ And all of these reasons were either baseless claims, hearsay or supposedly ‘super top secret’ intelligence—so secret that not even those with appropriate security clearances were given access. The Soleimani strike was the initial spark that ignited a series of events that almost caused a third world war.

Legality & Fallout

Agnes Callamard, the UN Special Rapporteur on Extra-Judicial Executions, argued that without a declaration of war between the US and Iran, Soleimani could not be a legitimate target. Trump tried to compare the killing of Soleimani to that of Osama bin Laden during the Obama administration, but that parallel failed to convince the UN. According to Callamard, Soleimani ‘was the representative of a state, and that is a very different situation.’⁷⁶⁷ Most historians and Iran experts would argue the opposite. Since the US and Iran had been fighting IS, a common enemy, there has been no evidence to claim that these states are in an existing armed conflict.⁷⁶⁸ Additionally, Congress has neither authorized nor recognized that the US and Iran were in armed conflict.

Hina Shamsi, the Director of the National Security Project at the American Civil Liberties Union, has called the Trump administration’s justification for killing Soleimani ‘weak.’ In an interview with CNN, Shamsi maintained that ‘the very limited circumstances in which use of force might be permitted under either domestic or international law quite simply haven’t been met.’ The United States has always been careful to distinguish between those it chooses to eliminate during targeted killing campaigns. With the strike on Soleimani, this distinction has been muddled.⁷⁶⁹

⁷⁶⁶ Abedi, ‘Soleimani Killing: A Look at the Trump Administration’s Evolving Explanations.’

⁷⁶⁷ Tim Lister and Eve Bower, ‘Growing Doubts on Legality of US Strike that Killed Iranian General,’ CNN, 06 January 2020.

⁷⁶⁸ Samuel M. Katz, *No Shadows in the Desert: Murder, Vengeance, and Espionage in the War Against ISIS* (New York: Hanover Square Press, 2020).

⁷⁶⁹ See also Marc R. DeVore, ‘Reluctant Innovators? Inter-organizational Conflict and the USA’s Route to Becoming a Drone Power,’ *Small Wars & Insurgencies* Vol.31, No.4 (2020), pp. 701-729; Asfandiyar Mir and Dylan Moore, ‘Drones, Surveillance, and Violence: Theory and Evidence from a US Drone Program,’ *International Studies Quarterly* Vol.63, No.4 (2019), pp. 846-862; and Milena Sterio, ‘Lethal Use of Drones: When the Executive is the Judge, Jury, and Executioner,’ *The Independent Review* Vol.23, No.1 (2018), pp. 35-50.

Karen Greenberg, the Director of the Center on National Security at Fordham University Law School, has reasoned that the US drone program's unchecked power began with the Obama administration and their expansion on the concept of imminence and the geographic boundaries of the battlefield. The Trump administration only compounded these issues with the most recent justification (or lack thereof) for the targeted killing of Gen. Soleimani. Greenberg recognized that the Soleimani killing crossed a line that even the Obama administration would not dare approach. The United States cannot, according to Greenberg, 'take aim at an official inside a government and say that is not a war... [the Trump administration] crossed a threshold, and the significance of that cannot be overstated.' Robert O'Brien, the US National Security Advisor and staunch Trump supporter, would care to disagree. O'Brien even told reporters that the targeted killing of Soleimani was 'fully authorized' under the 2002 Authorization for the Use of Military Force (AUMF). But this law is 18 years old and was designed and written with Saddam Hussein in mind—not Soleimani or Iran.⁷⁷⁰

Greenberg admitted that something needs to change in the US government urgently. Oversight and a system of checks and balances need to be applied. There needs to be 'some form of authorization for this war, and it cannot be our continually-expanding-without-oversight drone policy that has guided us for the last ten years. This constant redefinition of terms to push aside legal restraints has come to the point we all feared it would. "It's not assassination. It's targeted killing." Or, "it's not war, it's just the way we're doing business these days.'" Shamsi would agree with Greenberg's view, as she also has recognized that there has 'been a years-long trend of US presidents claiming ever more expansive authority to kill and engage in conflicts that are not just legally incorrect, but dangerous from the perspective of peace and security.' Callamard argues that these precedents set by subsequent presidential administrations are only exacerbating the issue. Arguing instead that the root cause needs to be addressed. 'What kind of institutions and rules will best protect people around the world, and do we think that kind of strike is conducive to an international rule of law?'⁷⁷¹

⁷⁷⁰ Lister and Bower, 'Growing Doubts on Legality of US Strike that Killed Iranian General.'

⁷⁷¹ Ibid, see also Marko Divac Öberg, 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ,' *European Journal of International Law* Vol.16, No.5 (2005), pp. 879-906.

Many lawyers argue that as a result of the Caroline case, the pre-requisites of necessity and proportionality emerged as necessary criteria that must be fulfilled for a state's claim to self-defence to be viewed as legitimate under customary international law.⁷⁷² In the presence of an imminent threat, customary international law allows states to respond preemptively in self-defence.⁷⁷³ Article 2 (4) of the UN Charter states that '[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the Purposes of the United Nations.'⁷⁷⁴

Restrictionist scholars argue that Article 51 of the Charter applies only to cases in which an armed attack has already occurred. As the law currently stands, a state would be required to wait until it is attacked before responding with military force.⁷⁷⁵ Counter-restrictionist scholars sharply contest this view, further claiming that the wording in Article 51, namely that states have an 'inherent right of self-defence,' implies that states could operate under the customary understanding of self-defence which has been practiced since antiquity, and which allows a limited form of legitimate preemptive self-defence.⁷⁷⁶ As such, politicians and states are not the only ones divided on the practice of preemptive self-defence.

Scholars have also long debated the legitimacy of pre-attack self-defence operations. The resulting lack of consensus has resulted in several cases being presented at the International Court of Justice (ICJ). The most notable occurred on the 27th of June 1986, which involved an ICJ judgement on *Nicaragua v. the United States of America*.⁷⁷⁷ This judgement found that the

⁷⁷² Anthony Clark Arend, 'International Law and the Preemptive Use of Military Force,' *The Washington Quarterly*, Vol. 256, No.2 (2003), pp. 89-103.

⁷⁷³ See Murphy, 'The Doctrine of Preemptive Self-Defence,' pp. 699-748.

⁷⁷⁴ UN, *Charter of the United Nations*, (San Francisco: United Nations, 1945), Article 2(4).

⁷⁷⁵ For greater discussion see David Kretzmer, 'The Inherent Right to Self-Defence and Proportionality in Jus ad Bellum,' *European Journal of International Law*, Vol. 24, No.1 (2013), pp. 235-282; and Arend, 'International Law and the Preemptive Use of Military Force,' pp. 89-103.

⁷⁷⁶ Agbada, 'Is the Killing of Qasem Soleimani by the United States of America Legal.'

⁷⁷⁷ ICJ, 'Military and Paramilitary Activities in and Against Nicaragua,' p. 14; see also Thomas Buergenthal, 'Lawmaking by the ICJ and Other International Courts,' from *Proceedings of the*

customary understanding of state-sponsored self-defence does coexist with the currently held UN Charter, specifically Article 51. The ICJ ruled that: ‘On one essential point, this treaty itself refers to pre-existing customary international law; this reference to customary law is contained in the actual text of Article 51, which mentions the ‘inherent right’ (in the French text the ‘droit naturel’) of an individual or collective self-defence, which ‘nothing in the present Charter shall impair’ and which applies in the event of an armed attack. The Court, therefore, finds that Article 51 of the Charter is only meaningful on the basis that there is a ‘natural’ or ‘inherent’ right of self-defence, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter.

Moreover, the Charter, having itself recognized the existence of this right, does not go on to regulate all aspects of its content directly. For example, it does not contain any specific rule whereby self-defence would warrant only measures proportional to the armed attack and necessary to respond to it, a rule well established in customary international law. Moreover, a definition of the ‘armed attack,’ which, if found to exist, authorizes the exercise of the ‘inherent right’ of self-defence, is not provided in the Charter and is not part of treaty law. Therefore, it cannot be held that Article 51 is a provision that ‘subsumes and supervenes’ customary international law. It instead demonstrates that in the field in question, the importance of which for the present dispute need hardly be stressed, customary international law continues to exist alongside treaty law.’⁷⁷⁸

The ICJ may have recognized the customary legal right of state-sponsored self-defence, but it did not refer to the legality of preemptive self-defence. In its official report, the ICJ admitted that ‘the possible lawfulness of a response to the imminent threat of an armed attack has not been raised. The Court has, therefore, to determine first whether such attack has occurred, and if so, whether the measures are allegedly taken in self-defence were a legally appropriate reaction as a matter of collective self-defence.’⁷⁷⁹ Despite this omission, the ICJ judgement made a remarkable

ASIL Annual Meeting, Vol. 103 (Cambridge: Cambridge University Press, 2009); and Gerald M. Steinberg, ‘The UN, the ICJ and the Separation Barrier: War by Other Means,’ *Israel Law Review* Vol.38, No.1 (2005), pp. 331.

⁷⁷⁸ ICJ, ‘Military and Paramilitary Activities in and Against Nicaragua,’ pp. 94-96.

⁷⁷⁹ Ibid, p. 94; see also Charles S. Milligan, ‘Alternatives to the Use of Force and the Role of the United Nations.’ *Denver Journal of International Law & Policy* Vol.20, No.1 (2020), pp. 7; and

observation. While the legality of preemptive self-defence still requires an official concrete legal inclusion, the ICJ judgement ‘gives credence to the argument that the customary international legal right of self-defence was merely recognized by Article 51 and not abolished. This supports a plausible conclusion that the right of preemptive self-defence survives Article 51 and can be exercised where there is an imminent threat of armed attack.’ Since the adoption of the UN Charter, states have irregularly applied the customary right to self-defence. Some opting to practice preemptive self-defence, arguing that it is an entrenched part of customary law. Others have chosen to abide by the current legal provisions outlined in Article 51 of the UN Charter. Expectedly, this confusion and inconsistency go beyond state application. The UN Security Council rulings have also shown a lack of consensus during events like the Cuban Missile Crisis, the Osirak attack and even the Six-Day War of 1967.⁷⁸⁰

The famous German jurist, Samuel von Pufendorf, developed a rather detailed moral and political philosophy that still has a bearing on this matter today. Building upon his predecessors' works, Grotius and Hobbes, Pufendorf compiled a textbook advising states on their ‘natural rights.’ In the case of Soleimani, for the US strike to be viewed as legitimate and lawful, the attack would have to fulfill the imminence criteria. Pufendorf noted that

when a man, contrary to the laws of peace, undertakes against me such things as tends to my destruction, it will be a most impudent thing to demand of me that I should his person violate, that is, that I should sacrifice my safety so that his villainy may have free play... It is reasonable for a man who is about to suffer some dread event to defend himself rather than to accept it. Otherwise, the victim of misfortune is accused of cowardice.⁷⁸¹

Pieter Kooijmans, ‘The ICJ in the 21st Century: Judicial Restraint, Judicial Activism, or Proactive Judicial Policy,’ *International and Comparative Law Quarterly*, Vol.56 (2007), pp. 741.

⁷⁸⁰ Agbada, ‘Is the Killing of Qasem Soleimani by the United States of America Legal.’

⁷⁸¹ Samuel Pufendorf, *De Jure Naturae Et Gentium Libri Oct*, Vol. 2 (New York: Oceana Publishing, 1964), p. 265; see also Fred Aja Agwu, *United Nations System, State Practice and the Jurisprudence of the Use of Force* (New York: Malthouse Press, 2005), p. 48.

Similarly, Agbada S. Agbada, a Lagos-based international lawyer, recognized that it is simply unrealistic for any legal institution to expect a state to stand by and endure a violent assault if they can preemptively attack first. If the Soleimani strike did occur due to knowledge of such a threat, then the response would be justified under the law. However, Agbada notes that the strike would have to be deemed unlawful and illegitimate in the absence of such evidence.⁷⁸²

Despite the unpredictability of long-term effects, the Soleimani strike did have some immediate legal and political costs. Raffaello Pantucci, Director of International Security Studies at the Royal United Services Institute (RUSI), predicted that Soleimani's death would heighten tensions, confrontations and perhaps even proxy attacks directed by the regime against Western nations and their interests. Although, as yet, the material signs of this have been limited, perhaps Teheran is biding its time.⁷⁸³

Additionally, Eytan Gilboa, Professor of International Affairs at Bar-Ilan University, surmised that although '[i]t is extremely difficult to forecast what will happen next... [t]he future could entail a major war, negotiations, or several scenarios in between, including an American withdrawal from the Middle East.' He reasoned that while the short and long-term ramifications of the US strike are challenging to foresee, what can be reasonably expected is that if 'Tehran pursues harsh revenge, Trump would have to respond in kind.' Even though these two adversaries may rank differently in military strength, an escalation in tensions between the two states would create an unstable political environment internationally. This tension might manifest into several outcomes, from the Iran deal's neutral renegotiation to the undesirable potential for war or even eventual US withdrawal of troops from the region.⁷⁸⁴

⁷⁸² Agbada, 'Is the Killing of Qasem Soleimani by the United States of America Legal.' ('impractical to expect states to stand by without taking preemptive action in response to imminent threats of armed attack. Therefore, provided that there was an imminent attack from Soleimani, his preemptive killing is lawful and justified. But if no such imminent threat existed at the time of the killing, the killing constitutes unlawful use of force by the US')

⁷⁸³ Raffaello Pantucci, 'Soleimani's Assassination: Could Jihadist Groups Benefit?' *Counter-Terrorist Trends and Analyses*, Vol. 12, No. 2 (2020), p. 11.

⁷⁸⁴ Eytan Gilboa, 'Why Did the US Kill Qassem Soleimani?' *Begin-Sadat Center for Strategic Studies*, 2020, pp. 9-12.

Gilboa concluded that ‘the main lesson for the US should take away from the recent exchanges of fire, is to avoid mixed messages and confusing actions that can lead to misperceptions and miscalculations.’⁷⁸⁵ This becomes especially true since the targeted killing of Soleimani by the CIA resulted in a domino-effect of consequences, including, among others, (i) the Iranian missile strikes against US bases in Iraq, (ii) the accidental Iranian downing of a civilian passenger jet, (iii) vows for revenge against the US from Hezbollah, Iran and Iraq, (iv) the threat of outright (possibly nuclear) war between the US and Iran, (v) the violation of Iraqi sovereignty, (vi) international and domestic protests against the strike, (vii) legal challenges regarding the legitimacy of the strike, and (viii) disagreement and tension within the US government regarding the necessity, true motivation, and unproven evidence of the imminent threat posed by Soleimani to warrant his execution by targeted strike rather than pursue other available diplomatic means.

Therefore, greater clarity and discussion became necessary to circumnavigate these muddled US statements and legally determine precisely what form of pre-attack self-defence the Trump administration relied upon when authorizing the Soleimani strike.⁷⁸⁶ Meanwhile, it has to be conceded that the background of international law against which they might be working remains confused with limited scholarly consensus.

The Dominant Political Narrative

Winston Churchill was correct in advising diplomacy over military action.⁷⁸⁷ But, with the advent of social media, it seems as though communicating through such mediums has become an unlikely, yet increasingly acceptable, form of diplomacy.⁷⁸⁸ Platforms like Twitter have provided states and

⁷⁸⁵ Ibid, p. 11; see also Robert D. Williams, ‘(Spy) Game Change: Cyber Networks, Intelligence Collection, and Covert Action,’ *George Washington Law Review*, Vol.79 (2010), pp. 1162.

⁷⁸⁶ See also John Prados, *The Ghosts of Langley: Into the CIA’s Heart of Darkness* (New York: New Press, 2017); and Huw Dylan, David V. Gioe, and Michael S. Goodman, ‘The Development of CIA Covert Action,’ in *The CIA and the Pursuit of Security: History, Documents and Contexts*, (Edinburgh: Edinburgh University Press, 2020).

⁷⁸⁷ Churchill famously noted that “to jaw-jaw is always better than to war-war”.

⁷⁸⁸ Constance Duncombe, *Social Media is an Important Tool for Public Diplomacy*, from *Soft Power and Diplomacy*, New York: Greenhaven Publishing, 2020: pp. 112-118; and Stephen D. Collins, Jeff R. DeWitt and Rebecca K. LeFebvre, *Hashtag Diplomacy: Twitter as a Tool for Engaging in Public Diplomacy and Promoting US Foreign Policy*, Place Brand Public Diplomacy, 23 February 2019: pp. 78–96.

their elected officials with an unparalleled opportunity to communicate—elevating diplomacy to a more casual, yet increasingly public, setting. The informality of this, however, can result in its misuse and abuse, as has been observed most notably during the Trump administration.⁷⁸⁹

The approach taken by the US president has detached completely from the customary practice of diplomacy, as Trump's fondness for aggressive, misleading and threatening tweets directed at foreign states has resulted in a number of repercussions from an increase in tensions among states to widespread public backlash.⁷⁹⁰ However, when used correctly, social media platforms like Twitter can serve as powerful tools which significantly improve the speed and accessibility of disseminated information. This certainly has its advantages. Among them is the increase in public attention to pertinent issues, the ease of communication and collaboration with foreign states or officials, and a control over the construction of dominant narratives.⁷⁹¹ Whilst it may have failed at mastering the practice of diplomacy, the US has instead mastered its control over the narrative.

Shortly following the Soleimani strike, the Trump administration was quick to put out a statement praising their 'successful' mission in eliminating a known 'terrorist.' Less than an hour later, President Trump took to the podium to recount how the mission went, and why the death of the Iranian General necessitated celebration. In this case, the narrative was constructed by the Trump administration, and gained traction through its numerous press briefings and speeches—some led by the President, others by key high-ranking government officials. For the most part, the stories aligned. But as the days went by, and more information about the strike (acquired from more objective international sources) was revealed, the narrative advanced by the White House was brought under more scrutiny. Perhaps aided by the status of those leading the press briefings

⁷⁸⁹ Duncombe, 2020: pp. 112-118; See also Saif Shahin and Q. Elyse Huang, *Friend, Ally, or Rival? Twitter Diplomacy as 'Technosocial' Performance of National Identity*, International Journal of Communication, University of Southern California, Vol. 13, 2019: pp. 5100-5118.

⁷⁹⁰ Maja Šimunjak and Alessandro Caliandro, *Twiplomacy in the Age of Donald Trump: Is the Diplomatic Code Changing?*, The Information Society, Vol. 35, Issue 1, 10 January 2019: pp. 13-25; see also Alexandra Homolar and Ronny Scholz, *The Power of Trump-speak: Populist Crisis Narratives and Ontological Security*, Cambridge Review of International Affairs, Vol. 32, Issue 3, 20 March 2019.

⁷⁹¹ Collins, DeWitt and LeFebvre, 2019: pp. 78–96.

or bolstered by the supposed reputation of the US as a principled combatant of terrorism worldwide, the narrative repeated by the White House became the dominant one. At least, for a little while.

The US narrative about the Soleimani strike began to weaken under international and domestic scrutiny regarding the necessity of the strike and legitimacy of the target. Trump had initially claimed that the mission was necessary, lawful and founded on intelligence demonstrating that Soleimani posed an imminent threat to the safety and security of the US and its allies. However, the Trump administrations' once dominant narrative seemingly weakened with the onslaught of shifting statements given by several key officials. On a seemingly daily basis, press briefings were held at the White House to address criticisms raised the previous day. Often led by the Secretaries of Defence and State, these briefings would quickly degrade into hour long screaming matches. Reporters who justly asked for greater clarification on the motivations for the strike, or the intelligence that warranted it, were given deflective answers which only further muddled the situation.

Following these briefings, the President would often take to twitter to reaffirm the legitimacy of the strike, without providing any evidence to substantiate such claims. In the evenings, Trump was often a guest on Fox News or another conservative network. When not on tv, radio or social media, he would hold impromptu speeches at the White House or Mar-a-Lago, praising his decision to authorize the strike. In essence, Trump tried to supplement the lack of intelligence with a barrage of noise. Yet, noise does not equal legitimacy.

As the days went on, the once dominant narrative weakened under new assertions by the President. In an interview, Trump revealed that he was justified in striking Soleimani because the Iranian General had a 'horrible past.' When this justification was met with criticism, Trump then claimed that Soleimani posed an imminent threat as he was actively planning to strike four embassies. Once again, no intelligence or evidence of this claim was ever presented. Moreover, this revelation came as news to the Director of the CIA, the Secretaries of State and Defence, and even the ambassadors stationed at the embassies in question. How did Trump hear of such a massive terror plot before these high-ranking intelligence officials? Shouldn't he be the one who's

informed of such matters? These questions still remain unanswered. However, when hearing of the President's revelation, some officials responded insinuating that the embassy plot threat was false by claiming that they believe the President 'believed' that the threat was real. Subjective language in lieu of concrete intelligence does nothing to advance the public's confidence in the US's narrative.

Constructing a dominant narrative requires a solid foundation of truth, accountability and resolute statements. The absence of such creates a post-truth environment that erodes away at the dominant narrative, the public confidence in state claims, and the perceived legitimacy of the operation in question. Such was the fate of the US narrative on the Soleimani strike. It was permitted dominant status by virtue of the reputation and standing of the United States and the power of the executive office. Yet, this narrative weakened due to the White House's shifting statements, the lack of intelligence presented to corroborate assertions, and a general post-truth environment which made domestic lawmakers just as suspicious of the true motivations behind the strike as the rest of the international community. Thus, the US's dominant narrative on the Soleimani strike eroded until it was viewed as a questionable saga.

US Foreign Policy: Historical Idiosyncrasies

Prior to the Soleimani strike, the US had chosen to keep their involvement in similar foreign assassination operations a secret. Plausible deniability in both the Mughniyeh and Fadlallah missions shielded the US from any political fallout. The Soleimani strike changed this historical narrative. Although the US successfully eliminated Soleimani, its public declaration of involvement in the strike gave way to an unprecedented level of legal, political, and national security consequences—emanating from domestic and international sources. Coupled with a lack of evidence to demonstrate the US' claim that Soleimani posed an 'imminent threat,' the fact that the mission was carried out in Iraq (a third-party state that did not have knowledge or grant permission for this operation), and the knowledge that the target was an active foreign government official—the operation became even more contentious than the previous historical operations in which the US had strategically chosen to keep their involvement a secret. In doing so, the

Soleimani strike set a precedent for US involvement in foreign operations—one which has broken with a norm abided by many past presidential administrations.

There have been notable idiosyncrasies in US drone strike policies over time. The US had been previously unwilling to target Soleimani, seen most notably in the Mughniyeh operation in 2008. Instead, the US opted to have the CIA covertly plan, strategize and participate in foreign operations—stopping just short of partaking in the execution of such missions. Instead, foreign intelligence agencies were aided by the CIA until the day of the operation—then their involvement would cease.

The following table was created to clearly show when and how the US chose to participate in the three operations discussed in this chapter. The outcomes of these missions, and their respective fallout, is also presented. As expected, the Soleimani strike marks the first public revelation of planning and completing a foreign assassination, which has also resulted in the only time (out of the three cases) that the US has faced direct backlash and consequences for their involvement.

TARGET	U.S. INVOLVEMENT	OUTCOME	OPERATION DATE
Ayatollah Mohammed Hussayn Fadlallah ‘The spiritual leader of Hezbollah’	<ul style="list-style-type: none"> Planned by the CIA Executed by Lebanese intelligence operatives Chosen location: Bir al-‘Abd quarter of Beirut, Lebanon 	<ul style="list-style-type: none"> Operation failed as target escaped bombing and civilian casualties were recorded U.S. did not acknowledge involvement in operation 	08 March 1985
Imad Mughniyah ‘Hezbollah’s international operations chief’	<ul style="list-style-type: none"> Planned by the CIA and Mossad (Israeli Intelligence) Executed by Mossad U.S. publicly denied involvement, despite evidence to the contrary (including statements by former intel operatives involved in the planning of the mission) 	<ul style="list-style-type: none"> Operation succeeded in that the intended target was eliminated This operation also saw a clear opportunity to eliminate Soleimani, but this was decided against by U.S. government officials who found it difficult to legally justify the intended action U.S. denial of involvement in this operation ensured no political fallout or similar consequences would ensue 	12 February 2008
Qasem Soleimani ‘Iranian major general in IRGC, Commander of Quds Force, and rumored Hezbollah ally’	<ul style="list-style-type: none"> U.S. solely planned and executed the attack using CIA resources and manpower No intelligence, aid, consultation or permission was sought from international sources or states (not even Iraq, whose airspace the U.S. illegally entered to carry out the operation) 	<ul style="list-style-type: none"> Operation succeeded in that it eliminated its intended target U.S. publicly announced that it was behind the strike, resulting in a series of consequences This fallout was so great that it can be argued that the Soleimani strike was in fact a failure due to the public backlash, legal challenges, and diplomatic issues which later developed These issues were compounded by the U.S.’ claim that Soleimani posed an imminent threat warranting his elimination—as of yet, no evidence or intelligence has been presented to corroborate these assertions 	03 January 2020

Figure 1: Idiosyncrasies in Previous US Drone Strikes

Killing Soleimani: Assassination, Killing or Execution?

Predictably, Soleimani's death has also raised many interesting legal questions. This section will attempt to determine how the strike ought to be classified or categorized. Was it an example of 'Political Assassination' due to Soleimani's Iranian government position? Or might it have been 'Execution' because he was killed without trial? Or perhaps a vaguely defined 'Targeted Killing' as a blanket term offering any number of justifications?

Both Britain and the United States carried out multiple assassinations of leaders, including generals during the Second World War.⁷⁹² Yet even during times of war, political assassination has been viewed as an unacceptable practice. It was arguably prohibited under the Hague Convention of 1907 and the Rome Statute of 1998, which specified that the International Criminal Court would prosecute such hostilities. During times of peace, this type of killing is illegal and a violation of Article 6 of the International Covenant on Civil and Political Rights.⁷⁹³ Subsequently, countries usually try to avoid any operations which might be misconstrued as political assassination unless the justification to do so seems legally sound and internationally supported and authorized. The incurred damage to this perceived legitimacy or reputation simply outweighs any potential benefits derived from political assassination. Few countries will engage in, nor admit participation in, political assassination unless the conditions mentioned above are sufficiently met. There is, however, no such hesitation to launch the more ambiguous category of targeted killing campaigns.

Despite the novelty of the term, the practise of targeted killing has been around for quite a while. The United States has employed this practice on numerous occasions for the past few decades, most notably within its counter-terror campaigns. Despite the change in terminology, this

⁷⁹² Adam Leong Kok Wey, *Killing the enemy: Assassination operations during World War II* (London: Bloomsbury Publishing, 2015).

⁷⁹³ Charli Carpenter, 'Assassination, Extrajudicial Execution or Targeted Killing—What's the Difference?' *Foreign Policy*, 10 January 2020.

practice is a form of extrajudicial execution.⁷⁹⁴ This term simply refers to the killing of nonstate actors in a foreign country, often without the prerequisite of a trial nor the requirement of evidence to justify such recourse. According to Professor Charli Carpenter, ‘the term “targeted killing,”... implies that US counter-terrorism strikes are something different—something not covered by norms’ and therefore beyond the scope of existing laws.⁷⁹⁵ However, arguably this notion is incorrect.

Despite US attempts to legally muddle the situation by renaming the practice, existing laws are quite capable of addressing extrajudicial killing in times of war and peacetime. For instance, only combatants can engage in such practices during war times—but only with other combatants, and only on a mutually declared battlefield.⁷⁹⁶ Additionally, further rules exist even in these scenarios. In interstate wars, only the armed forces of warring enemy states may engage in premeditated killing. Even here, there are restrictions. For example, if an enemy soldier has surrendered, been injured or imprisoned, they are no longer valid targets for this form of killing and must be protected.⁷⁹⁷ In international wars, the same provisions are respected, however, with an additional caveat. A country can only target and kill individuals of enemy states which are actively participating in hostilities.⁷⁹⁸

⁷⁹⁴ David Kretzmer, ‘Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?’ *European Journal of International Law*, Vol. 16, No.2 (2005), pp. 171-212.

⁷⁹⁵ Carpenter, ‘Assassination, Extrajudicial Execution or Targeted Killing—What’s the Difference?’

⁷⁹⁶ Michael L. Gross, ‘Assassination and Targeted Killing: Law Enforcement,’ *Journal of Applied Philosophy*, Vol. 23, No. 3 (2006), pp. 323-335; see also Oliver Kessler and Wouter Werner, ‘Extrajudicial Killing as Risk Management,’ *Security Dialogue*, Vol. 39, No.2 (2008), pp. 289-308; and Michael L. Gross, ‘Killing Civilians Intentionally: Double Effect, Reprisal and Necessity in the Middle East,’ *Political Science Quarterly*, Vol. 120, No.4 (2005), pp. 555–579.

⁷⁹⁷ Carpenter, ‘Assassination, Extrajudicial Execution or Targeted Killing—What’s the Difference?’; see also Michael Byers, *War Law: Understanding International Law and Armed Conflict* (New York: Open Road Publishing, 2007), pp. 115-224; William H. Boothby, *Weapons and the Law of Armed Conflict* (Oxford: Oxford University Press, 2016), pp. 90-91, 206-207; and ICRC, ‘Practice Relating to Rule 47. Attacks Against Persons Hors de Combat, Section B: Specific Categories of Persons Hors de Combat,’ *IHL Database*, (1977)
<https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule47_sectionb>.

⁷⁹⁸ ICRC, ‘Practice Relating to Rule 6. Civilians’ Loss of Protection from Attack, Section A: Direct Participation in Hostilities,’ *IHL Database*, (1949)
<https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule6_sectiona>.

But at what point does a combatant become a civilian, or vice versa? Is it when they leave the battlefield? When they lay down their weapons? These questions all have different answers, depending on which conflict is being analyzed. Scholars have admitted that some uncertainty exists surrounding this particular condition in an era of insurgency, terrorism, and intra-state war. This is especially pertinent when considering the age of remote drone wars.⁷⁹⁹ Does the operator count as a combatant only when operating the drone? When seated in the chair? When they leave the airbase? Many questions are still left unanswered, but the main point is that laws do exist which address extrajudicial killing as a practice. Simply calling extrajudicial killing ‘targeted killing’ does not exempt such operations from legal challenges.⁸⁰⁰

Conversely, in peacetime, human rights govern the protection of all individuals. Even those guilty of heinous crimes and terror activity must first be given the right to legal counsel and provided with a fair trial before being sentenced.⁸⁰¹ Organizations like *Amnesty International*, the *United Nations Office of the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions*, and *Human Rights Watch* have all been quite firm in their view that all forms of targeted killing violate international law—and more specifically, international human rights law, by not providing ‘targets’ with the opportunity to counsel or a fair trial.⁸⁰²

Regardless of wartime or peacetime, targeted killing is considered illegal by many both in the United States and internationally. This strategy's ambiguity arose following the September 11th attacks on the World Trade Centers in New York. Following the attacks, under the Bush Jr.

⁷⁹⁹ Christopher J. Fuller, *See It/Shoot it: The Secret History of the CIA's Lethal Drone Program*, (New Haven: Yale University Press, 2017), p. 147.

⁸⁰⁰ Some may call it premeditated that Iran gave Soleimani a concurrent minor diplomatic post, thus bringing him within the scope of the law on internationally protected persons. Regardless of the underlying motivations for this decision, Soleimani was in fact a foreign government official at the time of his death. The US should have therefore sought other more diplomatic means of addressing the threat he posed without violating international laws.

⁸⁰¹ Office of the United Nations High Commissioner for Human Rights, ‘Human Rights, Terrorism and Counter-terrorism Fact Sheet No. 32,’ *Office of the United Nations High Commissioner for Human Rights*, July 2008 <<https://www.ohchr.org/documents/publications/factsheet32en.pdf>>.

⁸⁰² See for example Christof Heyns et al., ‘The International Law Framework Regulating the Use of Armed Drones,’ *International and Comparative Law Quarterly* Vol.65, No.4 (2016), pp. 791-827.

administration, the United States maintained that ‘the ban on assassination applied only to political leaders and only in peacetime.’⁸⁰³ The first victim of this policy came in 2002, with a US drone strike in Yemen, which killed Qaed Salim al-Harethi, an al-Qaeda member with links to the bombing of the USS Cole.⁸⁰⁴ More broadly, many of the actions taken by Bush after 9/11 stemmed from a broad and expanding concept of the powers of the president in wartime. Some of these interpretations were advanced by lawyers who genuinely believed them, but others were opportunists who wished to push back against what they saw as years of erosion of executive privilege in the realm of national security.⁸⁰⁵

The Obama administration, which was no less sensitive to issues of presidential powers, continued with this same programme but broadened the scope of the battlefield to any state known to harbour (or be unwilling and unable to detain or prosecute) extremist individuals.⁸⁰⁶ At one point, this newly defined conflict area encompassed most of the Middle East.⁸⁰⁷ Obama greatly expanded this understanding, which initially began as Bush attempted to remove some prohibitions of assassination by declaring that political officials could be targeted if they were known to aid or abet terrorism. Obama secured this by declaring that conflict zones existed anywhere that terrorists were located, especially in regions where governments were unable or unwilling to arrest them.⁸⁰⁸ This conceptual broadening was legally important and was not limited to the understanding of the geographical and spatial scope of the battlefield but also extended to the temporal realm.

⁸⁰³ Carpenter, ‘Assassination, Extrajudicial Execution or Targeted Killing—What’s the Difference?’

⁸⁰⁴ Tung Yin, ‘Game of Drones: Defending Against Drone Terrorism,’ *Texas A&M University Law Review*, Vol. 2 (2015), pp. 635-673.

⁸⁰⁵ Baher Azmy, ‘An Insufficiently Accountable Presidency: Some Reflections on Jack Goldsmith’s Power and Constraint,’ *Case Western Reserve J. Int’l L.* Vol.45 (2012), p. 23.

⁸⁰⁶ See for example Michael W. Lewis, ‘Drones and the Boundaries of the Battlefield,’ *Texas International Law Journal* Vol. 47, No.293 (2012).

⁸⁰⁷ See Anthony H. Cordesman, ‘Obama and US Strategy in the Middle East: Looking Beyond Syria and ISIS,’ *Center for Strategic and International Studies*, 23 June 2016.

⁸⁰⁸ Hillel Ofek, ‘The Tortured Logic of Obama’s Drone War,’ *The New Atlantis*, No.27 (2010), pp. 35-44

Imminence was, therefore, conceptually ‘adapted’ and applied to the new technological war the US was fighting in the name of counter-terrorism.⁸⁰⁹ In particular, the imminence requirement was relaxed to include any individual who would have participated in a terror organization at one point or another.⁸¹⁰ Their membership and affiliation ensure that they always remain a threat, even when unarmed. Osama bin Laden, for instance, died unarmed in his Abbottabad compound on May 2nd, 2011.⁸¹¹ An international search was launched post-9/11, which lasted nearly a decade—during which time he was considered the most dangerous terrorist in the world.⁸¹² However, as Article 3 of the Geneva Conventions stipulates, no one should be killed if surrendering, injured or ill, unarmed or not engaged in active hostilities.⁸¹³

If viewed through a legal lens, the bin Laden operation was *technically* unlawful under international conventions. The reasoning behind this conclusion is simple: Osama bin Laden was unarmed and, therefore, not engaged in active hostilities while inside the compound. To ensure adherence to current international law, the US should have attempted to extract Osama, put him on trial and then dole out punishment under the law—as the Nuremberg trials once did for war criminals following World War II. Anything less than this cannot be deemed lawful under the current standards of international law. However, US national security law has been diverging from these understandings for more than a decade.

Moreover, current international law forbids lethal action against persons who are not actively participating in hostilities. Still, the United States had repeatedly, and nonchalantly, bypassed this prohibition through their use, and reliance on, lethal drone strikes. The most notable

⁸⁰⁹ Luca Trenta, ‘The Obama Administration’s Conceptual Change: Imminence and the Legitimation of Targeted Killings,’ *European Journal of International Security*, Vol. 3, No. 1, (2018), pp. 69–93.

⁸¹⁰ Carpenter, ‘Assassination, Extrajudicial Execution or Targeted Killing—What’s the Difference?’

⁸¹¹ John Rollins, ‘Osama bin Laden’s Death: Implications and Considerations,’ *International Journal of Terrorism & Political Hot Spots*, Vol.6, No.4 (2011), pp. 627–52.

⁸¹² See Peter L. Bergen, *Manhunt: The Ten-Year Search for Bin Laden—from 9/11 to Abbottabad* (Toronto: Doubleday Press Canada, 2012).

⁸¹³ ICRC, ‘Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention),’ *ICRC Archives*, 12 August 1949.

violation occurred in 2001 with the killing of Anwar al-Awlaki.⁸¹⁴ From an operational standpoint, the US strike was successful in that it eliminated an al-Qaeda propagandist.⁸¹⁵ Legally speaking, however, this strike also violated a host of international (and also potentially domestic) laws.⁸¹⁶

Yet, perhaps the most troubling example of this was the murder of Tariq Aziz in Pakistan. Aziz was a 16-year-old Pakistani anti-drone activist who had recently ‘volunteered to learn photography to begin documenting drone strikes near his home.’⁸¹⁷ Three days before his death, the young boy met with a reporter, Pratap Chatterjee, to discuss his plans to document civilian casualties perpetrated by US drones.⁸¹⁸ In his remote village, however, knowledge of technology was quite uncommon. So, access to, and familiarity with, cameras and computers made him a perfect candidate to document and report civilian drone casualties online.⁸¹⁹

For context, it is worthwhile to note that, according to the Bureau of Investigative Journalism, Pakistan is considered a hotbed of illegal drone activity. Since the start of drone strikes in 2004, there have been a minimum of 430 confirmed strikes, which have killed roughly 4,000 people. Of these, 950 were later confirmed to be civilian casualties, 207 of which were children.⁸²⁰ Once described as an avid soccer fan, Tariq Aziz was executed by a US drone just three days after attending an anti-drone seminar. Along with his 12-year-old cousin, Waheed Khan, Aziz was on

⁸¹⁴ See Robert Chesney, ‘Who May Be Killed? Anwar Al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force,’ *Yearbook of International Humanitarian Law*, Vol. 13 (2010), pp. 3–60.

⁸¹⁵ See Scott Shane, ‘The Enduring Influence of Anwar al-Awlaki in the Age of the Islamic State,’ *Combating Terrorism Center at West Point*, Vol. 9, No.7 (2016).

⁸¹⁶ Chesney, ‘Who May Be Killed? Anwar Al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force.’

⁸¹⁷ Democracy Now Staff, ‘US Drone Kills 16-Year-Old Pakistani Boy Days After He Attends Anti-Drone Organizing Meeting,’ *Democracy Now*, 07 November 2011 <https://www.democracynow.org/2011/11/7/us_drone_kills_16_year_old>.

⁸¹⁸ Pratap Chatterjee, ‘The CIA’s Unaccountable Drone War Claims Another Casualty,’ *The Guardian*, 07 November 2011.

⁸¹⁹ Democracy Now Staff, ‘US Drone Kills 16-Year-Old Pakistani Boy Days After He Attends Anti-Drone Organizing Meeting.’

⁸²⁰ BIJ Staff, ‘Drone Warfare: Strikes in Pakistan,’ *Bureau of Investigative Journalism*, January 2020 <https://www.thebureauinvestigates.com/projects/drone-war/charts?show_casualties=1&show_injuries=1&show_strikes=1&location=pakistan&from=2004-1-1&to=now>.

his way to bring their aunt home from a wedding.⁸²¹ Chatterjee later wondered, ‘whether the CIA is really attempting to identify people before they kill them.’ In cases like this, ‘it would have been so easy for the CIA and the [Inter-Services Intelligence of Pakistan], to come question these kids, to have taken them aside, even put them in jail or interrogated them... But instead, they chose to kill them.’ Chatterjee argued that the CIA’s decision to kill Aziz does not make any sense. Why ‘would a terrorist suspect come to a public meeting and converse openly with foreign lawyers and reporters, and allow himself to be photographed and interviewed?’ The details simply do not add up. The boys were not in hiding, so it would have been possible to arrest, detain and interrogate them to determine if they were involved in these alleged ‘terroristic activities.’ Rather than pursue this avenue, the CIA chose instead to murder two innocent children by drone.⁸²²

These cases raise two essential and perhaps theoretical questions. Does international law need to change to better address the modern strategies used in counter-terrorism operations? Or, do these strategies need reforming to adhere to the existing norms and expectations outlined in international law? The US has endeavoured to redefine the legal concepts of the battlefield, active combatants, and the concept of imminence to better suit their drone programme and their national interests. But this has focused on national regulation, often taking the form of classified instruments and findings that constitute strange, parallel world of White House legality.⁸²³ Perhaps most damaging of all has been the apathetic attitude the US has taken to the requirement of proportionality.⁸²⁴ As discussed earlier, proportionality is a criterion, along with others like distinction and imminence, which determine if an action can be ruled as ‘just’ under international

⁸²¹ Chatterjee, ‘The CIA’s Unaccountable Drone War Claims Another Casualty.’

⁸²² Democracy Now Staff, ‘US Drone Kills 16-Year-Old Pakistani Boy Days After He Attends Anti-Drone Organizing Meeting.’

⁸²³ Jack Goldsmith, *The Terror Presidency: Law and Judgment Inside the Bush Administration* (New York: WW Norton & Company, 2007).

⁸²⁴ Braun and Brunstetter, ‘Rethinking the Criterion for Assessing CIA-targeted Killings: Drones, Proportionality and Jus Ad Vim’; and Amos N. Guiora, ‘Targeted Killing: When Proportionality Gets All out of Proportion,’ *Case Western Reserve Journal of International Law*, Vol. 45 (2012), pp. 235-252.

law.⁸²⁵ Unfortunately, proportionality is one of the least abided concepts by the US and its drone program.⁸²⁶

Firmly entrenched in international law and precedent, proportionality is a check on military operations, requesting that each action be measured in terms of their strategic effectiveness and the potential risk to civilian populations.⁸²⁷ If the former outweighs the latter, then the operation may proceed with caution. If the latter outweighs the former, then the action can be viewed as unlawful if it proceeds. Both scenarios require an evaluation of the situation at hand, but this constant balance between risk and recompense is what international law would expect from such military operations. As aforesaid, the US has rarely undertaken this risk assessment during its drone led counter-terrorism efforts. If more care would have been afforded to this proportionality criterion, perhaps the tragedy that occurred in October 2006, wherein 69 children were killed, would not have happened.⁸²⁸ Unsurprisingly, with each subsequent presidential administration, the rules become ever less applicable. As Professor Carpenter has identified in her research, the rate of ‘civilian casualties [as a result of US drone operations] has risen under President Donald Trump.’⁸²⁹

Carpenter is not the first scholar to make this discovery. Stephanie Carvin and Jennifer Carson, political scientists and criminologists by profession, have both extensively researched the effect of targeted killings in counter-terrorism operations. They concluded that the results do not

⁸²⁵ Judith Gail Gardam, ‘Proportionality and Force in International Law,’ *American Journal of International Law*, Vol. 87, No. 3 (1993), pp. 391-413.

⁸²⁶ Rebecca Mignot-Mahdavi, ‘Drones Programs, the Individualization of War and the Ad Bellum Principle of Proportionality,’ in *Lieber Series Vol. 4*, Claus Kress & Robert Lawless eds., (Oxford: Oxford University Press, 2019).

⁸²⁷ Rebecca J. Barber, ‘The Proportionality Equation: Balancing Military Objectives with Civilian Lives in the Armed Conflict in Afghanistan,’ *Journal of Conflict and Security Law*, Vol. 15, No.3 (2010), pp. 467–500.

⁸²⁸ BIJ Staff, ‘Over 160 Children Reported Among Drone Deaths,’ *Bureau of Investigative Journalism*, 11 August 2011 <<https://www.thebureauinvestigates.com/stories/2011-08-11/over-160-children-reported-among-drone-deaths>>.

⁸²⁹ Carpenter, ‘Assassination, Extrajudicial Execution or Targeted Killing—What’s the Difference?’

indicate that there is any merit in targeted killing operations.⁸³⁰ This strategy might be counterproductive—furthermore undermining the principle of proportionality.⁸³¹ Carpenter has found that ‘[t]he language of targeted killings implies precision and accuracy, but in reality, an estimated 90 percent of the deaths they cause are among civilians.’⁸³²

Simon Pratt, a political scientist, pointed out that Obama was quite successful in spinning rhetoric during his speeches to effectively distinguish between targeted killing and assassination—when in actuality, no such distinction can be made.⁸³³ Regardless, Americans began to view targeted killing as a more effective and lawful form of counter-terrorism, with a 2015 poll even reporting that most Americans supported targeted killing practices.⁸³⁴ With the targeted killing of Soleimani, however, this overwhelming domestic support quickly collapsed.⁸³⁵ Perhaps this is because Soleimani should have been arrested and brought to trial as a government official, or perhaps people simply feared retaliation.

An international lawyer might observe that at the United States' request, an international legal body would have had the authority to order Soleimani to stand trial. Surely the evidence which compelled the United States to launch the lethal drone strike against him would be sufficient to convince the ICC, for instance, to bring him to trial. It is commonly understood to be unlawful for an individual to be hunted down and killed without trial. Add into the mix the fact that it was not on an active battlefield, the target was a foreign government official, and his purpose in the

⁸³⁰ See Stephanie Carvin, ‘The Trouble with Targeted Killing,’ *Journal of Security Studies*, Vol. 21, No.3 (2012), pp. 529-555; and Jennifer Varriale Carson, ‘Assessing the Effectiveness of High-Profile Targeted Killings in the “War on Terror”,’ *Journal of Criminology and Public Policy*, Vol. 16, No.1, (2017).

⁸³¹ Zachary Cleary, ‘Re-evaluating the Efficacy of Targeted Killing,’ *The Illini Journal of International Security*, Vol.4, No.1 (2008).

⁸³² Carpenter, ‘Assassination, Extrajudicial Execution or Targeted Killing—What’s the Difference?’

⁸³³ Ibid, see also Simon Frankell Pratt, ‘Norm Transformation and the Institutionalization of Targeted Killing in the US,’ *European Journal of International Relations*, Vo.25, No.3 (2018), pp. 723-747.

⁸³⁴ PEW Staff, ‘Majority Supports US Drone Strikes: Survey Conducted May 2015,’ *PEW Research Center*, 28 May 2015.

⁸³⁵ PEW Staff, ‘Majority of US Public Says Trump’s Approach on Iran Has Raised Chances of a Major Conflict,’ *PEW Research Center*, 15 January 2020.

third-party country in which he was executed was not demonstrated as constituting an imminent threat worthy of immediate elimination.⁸³⁶ The United States would probably respond that the chances of arresting Soleimani and bring him before the ICC was, in practical terms, slim. Moreover, the subsequent requirement to make intelligence available to secure his conviction would further imperil American lives. These sorts of debates attempted to secure convictions in the ICTY during the 1990s.⁸³⁷

Unsurprisingly, the military action taken against Soleimani escalated tensions with Iran.⁸³⁸ It demonstrated that the strategy of targeted killing could result in secondary consequences by providing countries with an unchecked opportunity to eliminate adversaries without due process covertly. The assassination of political leaders has been prohibited during times of war to protect ‘the leaders of powerful states against harm by weaker adversaries, who may be tempted to deploy assassination because they could not defeat more powerful armies in the field.’⁸³⁹ Following the strike, the United States claimed that it acted in self-defence against the imminent threat posed by Soleimani.⁸⁴⁰ But as Ian Hurd, Professor of Political Science at Northwestern University, points out, when states claim ‘self-defence,’ they are doing so in a self-serving manner.⁸⁴¹ They have no real motivation to adhere to the concept set forth by international law legally. They are just declaring this to maintain a certain air of legitimacy. Michael Byers, a Canadian legal scholar, has

⁸³⁶ It is important to recognize that there has been a general shift away from a counter-insurgency strategy to counter-terrorism (killing) as an overall approach since 2005, facilitated in part by mounting pressures from various European countries and the UN apparatus in general.

⁸³⁷ Jonathan R., Alder, et al. *The Role of Intelligence in Ending the War in Bosnia in 1995* (Lexington: Lexington Books, 2014).

⁸³⁸ Al Jazeera Staff, ‘US and Iran: Tensions Keep Rising After Soleimani's Death,’ *Al Jazeera*, 02 February 2020.

⁸³⁹ Carpenter, ‘Assassination, Extrajudicial Execution or Targeted Killing—What’s the Difference?’; see also Shawn Snow, Howard Altman, and Aaron Mehta, ‘Fears of New Conflict Rise After US Kills Qasem Soleimani, a Top Iranian General, in Strike on Baghdad Airport,’ *Military Times*, 02 January 2020; and Isabel Coles, ‘Tensions Rise in the Middle East After US Killing of Iranian Military Leader,’ *The Wall Street Journal*, 03 January 2020.

⁸⁴⁰ Geoffrey S. Corn and Chris Jenks, ‘Soleimani and the Tactical Execution of Strategic Self-defence,’ *Lawfare: International Law*, 24 January 2020.

⁸⁴¹ Ian Hurd, ‘Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World,’ *Journal of Ethics & International Affairs*, Vol.25, No. 3 (2011), pp. 293-313; and Ian Hurd, ‘If I Had a Rocket Launcher: Self-Defense and Forever War in International Law,’ *Houston Law Review*, Vol. 56 (2019).

also taken this view. Byers has argued that self-defence has become more of a political justification than a legal claim to the right to engage in war.⁸⁴² Although the Trump administration would like the international legal community to submit to its justification as to why it ordered a drone strike on Soleimani, the evidence reveals particular concerns that the US government has yet to address appropriately. The White House may say that it acted lawfully, in accordance with a form of anticipatory self-defence. But the evidence, or lack thereof, tells a different story.

The strike could also be perceived as a war crime. The only form of self-defence that could be sufficiently fulfilled is preventative self-defence, which is the most contentious form. Some might even reason that this, in and of itself, is sufficient to prove that the strike was illegitimate and subsequently illegal. It is difficult to legitimately claim self-defence when delivering a lethal strike against a perceived enemy—remotely, via drone. At the present moment, the matter of whether the US legitimately resorted to a preemptive strike in self-defence is still under deliberation. This section merely seeks to suggest that out of the three terms—political assassination, execution or targeted killing, the available information suggests that the US strike on Soleimani would be best categorized as a form of execution. This distinction is essential to make, as terminologies and definitions delimit acceptable action parameters—as under international law. To escape or broaden these parameters, the US has spent a significant amount of time attempting to find loopholes and developing new terms for actions presently denounced in international law. Therefore, identifying these three potential categories and cross-examining them with available information on the strike has allowed for a preliminary classification to be made.

In truth, targeted killing is a vague and slippery term that has permitted the US to distance itself from what the practice is—remote, extrajudicial execution by drone.⁸⁴³ In the end, a choice had to be made. Should the Soleimani strike be classified as a political assassination or extrajudicial execution? Since, at the time of writing, there is no definitive evidence to tie the failed Yemeni assassination attempt⁸⁴⁴ (which will be examined in greater detail later in this chapter) to

⁸⁴² Michael Byers, 'Jumping the Gun,' *London Review of Books* Vol.24, No.11 (2002), pp. 3-5.

⁸⁴³ See Hurd, 'Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World.'

⁸⁴⁴ See also John Hudson, Missy Ryan and Josh Dawsey, 'On the Day US Forces Killed Soleimani, They Targeted A Senior Iranian Official in Yemen,' *The Washington Post*, 10 January 2020; Jean Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World* (New York:

the ‘successful’⁸⁴⁵ Soleimani strike, the decision was made to tag the Soleimani strike as an ‘execution’ scrupulously.

Suppose in the future there is intelligence presented which ties both drone strikes together, suggesting that the US attempted to bring about regime change within Iran. In that case, the current categorization of the Soleimani strike might well be upgraded from ‘execution’ to ‘political assassination’—as the motivation behind both drone strikes had an underlying political agenda. Until then, this dissertation argues that the Soleimani strike was, in fact, a relatively uncomplicated execution. Despite these reservations, what is nonetheless certain is that the strike on Soleimani was not simply a case of ‘targeted killing,’ as the US has consistently maintained.

The term ‘targeted killing,’ it will be argued, means little as nothing distinguishes it, strategically or operationally, from extrajudicial killing. The term was coined by the US who found an opportunity to rebrand its drone operations by renaming its lethal strikes as ‘targeted killings,’ subsequently distancing itself from the negative political connotations associated with the term ‘execution,’ and similarly attaching some element of legitimacy to the strikes—by inferring that they were more precise than other military tactics.

Soleimani’s Death Authorized Months Earlier

The timing of the Soleimani strike has also been highly contested. According to five current and former US government officials, President Trump’s killing of Soleimani was authorized seven months before the strike, which eventually killed him.⁸⁴⁶ However, one condition was placed on this authorization: the trigger had to be an Iranian action that resulted in an American death. On December 27th, 2019, this condition was fulfilled when Hezbollah launched upwards of 30 rockets, which killed a US contractor and wounded four US soldiers at an Iraqi air base in

Basic Books, 2008); Claire Finkelstein, Jens David Ohlin, and Andrew Altman, *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford: Oxford University Press, 2012), pp. 90-467; and Martin Senn and Jodok Troy, *The Transformation of Targeted Killing and International Order* (London: Routledge, 2020), pp. 36-152.

⁸⁴⁵ Successful, as declared by the US government and by the Trump administration.

⁸⁴⁶ See Carol E. Lee and Courtney Kube, ‘Trump Authorized Soleimani’s Killing 7 Months Ago, with Conditions,’ *NBC News*, 13 January 2020.

Kirkuk.⁸⁴⁷ Despite Hezbollah denying involvement in the K-1 Air Base attack, the US viewed the incident as a fulfilment of their singular precondition.⁸⁴⁸ And so, the hunt for Soleimani began. But not before the US retaliated against Hezbollah by launching airstrikes against its weapons and command sites in Syria and Iraq.⁸⁴⁹ In response, Iranian-backed militiamen stormed the US Embassy in Baghdad. In other words, on the ground, the conflict between US and Iranian proxies controlled by Soleimani was escalating.⁸⁵⁰

Defence Secretary Mark Esper proposed several response options to the president.⁸⁵¹ As a senior Trump administration official confirmed, '[t]here [had] been a number of options presented to the president over the course of time.'⁸⁵² However, it was Trump's National Security Advisor, Robert O'Brien and the Secretary of State, Mike Pompeo, who strongly advised the president to retaliate against Iran by approving the proposed plan to assassinate Soleimani.⁸⁵³

For years, Pompeo had advocated for a more aggressive position on Iran and Soleimani.⁸⁵⁴ He had been especially animated about an Iranian attack on the UK embassy, and several months before the January 2020 attack, Pompeo even presented Trump with intelligence demonstrating that Soleimani was involved in 'very serious threats that didn't come to fruition,' and advocated for his elimination in the interest of both national and international security.⁸⁵⁵ However, certain

⁸⁴⁷ Michael R. Gordon, 'Rocket Attack in Iraq Kills US Contractor, Wounds Four US Troops,' *The Wall Street Journal*, 28 December 2019.

⁸⁴⁸ Georgy, 'Inside the Plot by Iran's Soleimani to Attack US Forces in Iraq.'

⁸⁴⁹ Julien E. Barnes, 'US Launches Airstrikes on Iranian-Backed Forces in Iraq and Syria,' *New York Times*, 29 December 2019.

⁸⁵⁰ Reuters Staff, 'Protesters Storm US Embassy Compound in Baghdad,' *Reuters*, 31 December 2019; US Department of State, 'Security Alert—US Embassy Baghdad, Iraq, US Embassy and Consulates in Iraq,' *US Department of State Staff*, 31 December 2019: <<https://iq.usembassy.gov/security-alert-u-s-embassy-baghdad-iraq-123119/>>.

⁸⁵¹ It is perhaps worth emphasizing that there were severe tensions between many policymakers and US government officials in the Trump administration who had differing views on the actions which should have been taken against Soleimani.

⁸⁵² Lee and Kube, 'Trump Authorized Soleimani's Killing 7 Months Ago with Conditions.'

⁸⁵³ Daniel Lippman, Wesley Morgan, Meridith McGraw and Nahal Toosi, 'How Trump Decided to Kill Iran's Soleimani,' *Politico Europe*, 06 January 2020.

⁸⁵⁴ John Bolton, *The Room Where It Happened: A White House Memoir* (New York: Simon and Schuster, 2020).

⁸⁵⁵ Lee and Kube, 'Trump Authorized Soleimani's Killing 7 Months Ago with Conditions.'

high-ranking government officials were left unconvinced by these assertions and found Pompeo's proposed 'aggressive stance' towards Iran disconcerting. Conversely, Robert O'Brien's predecessor, Bolton, advised the president to ignore these 'liberal objections' and approve Pompeo's plans. This recommendation was undoubtedly associated with his long-held policy beliefs. Bolton had long advocated in favour of military strategies capable of bringing about regime change in Iran. Among colleagues, he was characterized as a 'long-time Iran hawk.'⁸⁵⁶ Bolton was the one who pressed Trump to declare the entire Islamic Revolutionary Guards Corps as a terrorist organization.⁸⁵⁷ Iran quickly responded, designating the entire US military as an extremist group. The reality was that both the Quds force and US Special Forces were sponsoring a range of groups on the ground that they did not always fully control.⁸⁵⁸

After some deliberation, Trump approved a CIA plan to kill Soleimani in Baghdad.⁸⁵⁹ The plan in question was the one that played out on January 3rd, which sought to capitalize on the opportunity of targeting Soleimani during off-peak hours at Imam Khomeini International Airport in Baghdad—therefore posing a decreased risk to civilians.⁸⁶⁰ To be fair, this was not precisely a rushed decision, and there had been much deliberation down the years. It was thirteen years earlier, in 2007, when the Bush administration declared the Quds Force to be a terror organization. Then, in 2011, Obama announced further sanctions on senior Quds Force officials to participate in an 'alleged plot to assassinate the Saudi ambassador in the United States.'⁸⁶¹ Soleimani often found

⁸⁵⁶ Ariane Tabatabai and Dina Esfandiary, *Triple-Axis: Iran's Relations with Russia and China*, (London: Bloomsbury, 2018), p. 182; see also John Bolton, *Surrender Is Not an Option* (New York: Simon and Schuster, 2008).

⁸⁵⁷ Suzanne Maloney, 'What Both Trump and His Critics Get Wrong About the IRGC Terrorist Designation,' *Brookings Institution*, 11 April 2019.

⁸⁵⁸ Al Jazeera Staff, 'Iran Responds in Kind to Trump's IRGC "Terrorist" Designation', *Al Jazeera*, 08 April 2019; and CNBC Staff, 'Iran Condemns Trump as "Terrorist in a Suit" After Attack Threat,' *CNBC News*, 05 January 2020.

⁸⁵⁹ Lee and Kube, 'Trump Authorized Soleimani's Killing 7 Months Ago with Conditions.'

⁸⁶⁰ Alex Vatanka et. al., 'The Killing of Qassem Soleimani: Analysis from MEI Experts,' *Middle East Institute*, 3 January 2020.

⁸⁶¹ Larry Neumeister, 'Not Guilty Plea in Plot to Kill Saudi Ambassador,' *Associated Press*, 24 October 2011.

himself among officials who had been identified by these sanctions.⁸⁶² Yet, no previous administration saw it as urgent or indeed sagacious to eliminate him.

As Eric Edelman, a former diplomat and senior US Defence Department official who replaced Douglas Feith at the Pentagon, recounted, that ‘[t]here were a lot of us who thought [Soleimani] should be taken out. But at the end of the day, they decided not to do that... the danger of escalation and the danger of having a conflict with Iran while we already had our hands full with Iraq.’ Unless he posed an imminent threat, no past administrations saw it necessary to waste time chasing Soleimani. That is, however, until Donald Trump became president. The targeted killing of Soleimani ‘marked a break from past administrations, which have never publicly claimed responsibility for killing senior figures from the Iranian regime or its proxies.’ The claims of five government officials who state that Trump authorized the killing of Soleimani in mid-2019 raises questions about the true purpose behind his targeting. However, the ‘timing could undermine the Trump administration’s stated justification for ordering the US drone strike that killed Soleimani. Officials have said ‘Soleimani...was planning imminent attacks on Americans and had to be stopped,’ but this new revelation challenges this cleanly presented reasoning about necessity and imminence.⁸⁶³ Now we know that the Trump administration not only killed Soleimani but authorized his assassination seven months earlier—dismantling the American claim to imminence, raising further questions about the legality and legitimacy of the entire operation.

Conjecture & Speculation: Intelligence in the Trump Era

The Trump administration has maintained that Soleimani posed an imminent threat—a threat so urgent that their only option was to eliminate him.⁸⁶⁴ But when asked to provide evidence of the

⁸⁶² Rowan Scarborough, ‘Qassem Soleimani Was Kept on US Sanctions List, But Not Europe’s,’ *The Washington Times*, 15 January 2020.

⁸⁶³ Lee and Kube, ‘Trump Authorized Soleimani’s Killing 7 Months Ago with Conditions,’

⁸⁶⁴ Peter Baker and Thomas Gibbons-Neff, ‘Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again,’ *The New York Times*, 12 January 2020 (‘[t]hey had to kill [Soleimani] because he was planning an ‘imminent’ attack. But how imminent they could not say. Where they could not say. When they could not say. And really, it was more about what he had already done. Or actually, it was to stop him from hitting an American embassy. Or four embassies. Or not.’)

threat in question, ‘Trump has instead provided his own guesses.’⁸⁶⁵—creating a ‘mess’ of the whole situation. Unsurprisingly, this was not the first time that the White House had issued conflicting and self-contradictory statements.

This increasingly casual relationship with facts, often termed ‘post-truth,’ was repeated in the Trump administration’s briefing on the casualties and damage caused by Iran’s ‘Operation Shahid Soleimani.’ At first, Trump claimed that no US troops were injured in the strikes. Then, he said eleven soldiers were being treated for minor headaches. Ultimately, the truth was revealed by medical sources who confirmed that over one hundred soldiers were being treated for severe injuries, including traumatic brain injuries. Glenn Carle, the former Deputy National Security Officer, responded to the Trump administration’s handling of the Soleimani strike by calling the ‘releasing of information... almost an overstatement. What they have done is respond to pressure with momentary comments and dissembling.’ In support of this position is Aaron David Miller, a senior fellow at Carnegie Endowment for International Peace, who has similarly pointed out the ‘woefully inadequate’ intelligence and government statements which have accompanied the US’s post-strike explanations.⁸⁶⁶

It is as though ‘[w]e are all wandering in the dark here,’ Miller explained, ‘They really have not made a case in a compelling way to justify why they needed to do this now, [which] has raised a number of serious questions about the administration’s motives.’ Conversely, Michael O’Hanlon, a senior fellow in foreign policy at the Brookings Institution, clarified that the unsuccessful means by which the US has justified the strike does not mean that it was illegal. It merely means that their explanation, analysis and presentation of evidence left too many gaps—preventing those without full access from drawing a definitive conclusion from the information that was being presented.⁸⁶⁷ But when questioned further, some administration officials brushed off calls to release information, while others began overtly attacking those who challenged their

⁸⁶⁵ Aaron Blake, ‘Trump’s ‘Four Embassies’ Claim Utterly Falls Apart,’ *The Washington Post*, 13 January 2020.

⁸⁶⁶ Joseph Stepansky, ‘Timeline of Trump’s Shifting Justifications for Soleimani Killing,’ *Al Jazeera*, 19 February 2020.

⁸⁶⁷ Ibid.

statements and reports. Expectedly, we find Trump himself in the latter category. On Twitter, the US President has explicitly attacked Democrats who questioned him.⁸⁶⁸

No one denies that Soleimani was involved, both directly and indirectly, in terroristic activities that had resulted in the death of American soldiers. However, this had been the status quo since 2003, so the obvious question is ‘why now?’ There has still been no intelligence presented that clearly and definitively demonstrates that Soleimani posed an imminent threat (either to the US or its interests) at the time of his death. If this fact cannot be established, then the strike cannot be deemed lawful under international law. Again, there is a widening gap between international law and US national security law for, according to John B. Bellinger III, a State Department lawyer, under domestic US law, President Trump does ‘have the legal authority to strike under the Constitution whether or not there was fear of an imminent attack.’ Under international law, things get more complicated. The United Nations Charter stipulates that the US ‘cannot use force in another country without its consent or the Security Council’s authority except in response to an armed attack or a threat of an imminent attack.’ Bellinger correctly observes that, ‘under international law, the attack on Suleimani [sic] would not have been lawful unless he presented an imminent threat.’⁸⁶⁹

Therefore, the Trump administration sought to spin the narrative to categorize the strike as legal, domestically speaking. Doing so at the international level would take much more effort and significantly more exaggeration. It was for this reason that Pompeo, immediately following the strike, claimed that Soleimani posed an imminent threat to the United States. According to him, the imminent attacks would have cost ‘hundreds of American lives.’⁸⁷⁰ Public skepticism quickly followed since there had been no attack, or threat of attack, since the early days of the Iraq war,

⁸⁶⁸ Donald J. Trump via Twitter on 13 January 2020.

<https://twitter.com/realDonaldTrump/status/1216748556561866755?s=20> (Trump claimed that Democrats were ‘trying to make terrorist Soleimani into a wonderful guy, only because I did what should have been done for 20 years. Anything I do, whether it’s the economy, military, or anything else, will be scorned by the Radical Left, Do Nothing Democrats!’)

⁸⁶⁹ Baker and Gibbons-Neff, ‘Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again.’

⁸⁷⁰ John Hudson et. al., ‘Killing of Soleimani Follows Long Push from Pompeo For Aggressive Action Against Iran, But Airstrike Brings Serious Risks,’ *The Washington Post*, 05 January 2020.

which even remotely matched the US casualty estimates Pompeo mentioned. This is simply because military bases, embassies and joint compounds in the region are heavily protected. Later, an unnamed State Department official admitted privately that Pompeo erred when he used the word imminent, ‘because it suggested a level of specificity that was not borne by the intelligence.’⁸⁷¹

Robert O’Brien then attempted to downplay the administration’s earlier claims of imminent embassy attacks. Stating that ‘it is always difficult, even with the exquisite intelligence that we have, to know exactly what the targets are.’⁸⁷² Mark Esper, the US Secretary of Defence, echoed this sentiment, furthermore ‘clarifying’ that the administration ‘knew there were threats to American facilities, now whether they were bases, embassies—you know it’s always hard until the attack happens.’⁸⁷³ Blake reported how Trump had

repeatedly suggested that [his claims were] based on actual intelligence, even though Esper now says it was not. And in the process of explaining Trump’s comment, Pompeo suggested that the attack on multiple embassies were in the intelligence shared with Congress. Esper now claims that the multiple embassies are not in the intelligence, but that even the information that Soleimani was prepared to strike one of them was not shared with the broader Congress. What will the next explanation be?⁸⁷⁴

Without knowledge of intended targets, how far along could the ‘imminent plot’ have been? If one were to ask General Mark A. Milley, the Chairman of the Joint Chiefs of Staff, and

⁸⁷¹ Baker and Gibbons-Neff, ‘Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again.’

⁸⁷² Andrew Ackerman, ‘US Officials Defend Decision to Kill Iranian General,’ *The Wall Street Journal*, 12 January 2020 <<https://www.wsj.com/articles/u-s-officials-defend-decision-to-kill-iranian-general-11578860871>>.

⁸⁷³ Rachel Sandler, ‘Defense Secretary Mark Esper Says He Didn’t See Evidence of Embassy Attacks,’ *Forbes*, 12 January 2020

<<https://www.forbes.com/sites/rachelsandler/2020/01/12/defense-sec-mark-esper-says-he-didnt-see-evidence-of-embassy-attacks-as-trump-had-claimed/#552bac4c1c4f>>.

⁸⁷⁴ Blake, ‘Trump’s ‘Four Embassies’ Claim Utterly Falls Apart.’

Gina Haspel, the Director of the CIA, both would vehemently argue that the attacks were impending. But is Milley and Haspel's support for the strike, and by extension the Trump administration's justification for the operation, genuine and therefore derived from the intelligence, or was it based upon a need to please the man who hired them? Trump-appointed both Milley and Haspel to their current positions. Many have even pointed out that both are professional 'career officials without a political history.'⁸⁷⁵

The extent to which intelligence has been politicized under Trump is not yet clear and will be debated by scholars for a long time to come. Yet many have witnessed the autocratic-style support Trump demands from his political appointees and corporate cronies—the constant changing of his National Security Advisor is the most obvious example.⁸⁷⁶ Perhaps this is not mere supposition, considering Haspel was seen enthusiastically clapping during Trump's 2020 State of the Union address—an act seen by some as unbecoming of an official appointed to a non-partisan position.⁸⁷⁷ General Michael Hayden, former CIA Director, recounted how he never clapped at the State of the Union address because it would be improper for an official elected in a non-partisan position to favour one party. Even the mere presence of a CIA director at a State of the Union address is relatively uncommon. As former CIA directors like John McLaughlin and John Brennan have confirmed, attendance is not mandatory and not encouraged.⁸⁷⁸ To attend takes personal initiative. To clap at the address illustrates a degree of personal support. If Haspel has forgone the traditional protocol limiting public displays of support for presidential administrations, would it be such a stretch to assume that this has similarly occurred in private?

Another adamant supporter of the strike was William Barr, the US Attorney General. Barr went so far as to claim that killing Soleimani was not only 'a legitimate act of self-defence' but

⁸⁷⁵ Baker and Gibbons-Neff, 'Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again.'

⁸⁷⁶ See Henry A. Giroux, *The Public in Peril: Trump and the Menace of American Authoritarianism* (London: Routledge, 2017); Anthony L. Fisher, 'Trump's Lifelong Devotion to Cronyism is Getting People Killed,' *Business Insider*, 14 May 2020; and Jeff Robbins, 'Trump Cronies Put Careers Before Country,' *Boston Herald*, 14 October 2019.

⁸⁷⁷ See Natasha Bertrand and Daniel Lippman, "'I Never Did That': Haspel's Clapping for Trump Rankles Intel Veterans,' *Politico*, 05 February 2020.

⁸⁷⁸ Bertrand and Lippman, "'I Never Did That': Haspel's Clapping for Trump Rankles Intel Veterans.'

that the requirement of ‘imminence is something of a red herring.’⁸⁷⁹ If proving imminence was a distraction, and intelligence was unimportant—upon what did the administration base their judgement? McLaughlin even admitted that even if the Trump administration did not have the intelligence to warrant a response against Soleimani, this does not necessarily answer why a strike (which could have provoked more aggression) was chosen as the most appropriate course of action.

Lisa Monaco, a former FBI official and Homeland Security advisor to President Obama, has reasoned that if the strike on Soleimani was in response to a credible threat, then why is the Trump administration not showing this intelligence to the public, or at the very least, to Congress? Choosing to keep silent has only negatively affected the legitimacy of the strike and, by extension, the perceived credibility of the administration. Irrespective of committed ‘Make America Great Again’ (MAGA) supporters, the American public has been the most difficult to persuade. Since the US invaded Iraq on faulty intelligence regarding weapons of mass destruction, the American public has since had a rather tricky time believing unsubstantiated statements made by the government, and this has been underlined by the lack of public support for airstrikes against Syria in the context of government ‘intelligence’ on chemical weapons.⁸⁸⁰

Consequently, persuading the American people of the necessity of the Soleimani strike was difficult. The challenge was also derived from the fact that officials could not corroborate their claims with the supposed classified intelligence they had (but could not share), which pointed to an imminent threat (they could not discuss) on targets (they could not identify). The immediate fallout, which resulted in ‘escalated tensions with Iran, aggravated relations with European allies and prompted Iraq to threaten to expel United States forces,’ also did not help the situation.⁸⁸¹ Claiming that the intelligence was sufficient to launch an attack was certainly not the conclusion reached by many congresspeople privy to this same intelligence level.

⁸⁷⁹ Zachary Cohen, ‘Barr and Pompeo Shift Justification for Iran Strike From ‘Imminent’ Threat to Deterrence,’ *CNN*, 14 January 2020 <<https://edition.cnn.com/2020/01/13/politics/pompeo-barr-soleimani-strike-iran-rationale/index.html>>.

⁸⁸⁰ Baker and Gibbons-Neff, ‘Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again.’

⁸⁸¹ *Ibid.*

For some time, there had been an abiding and widely shared opinion amongst Congress members who worked the national security beat that Soleimani posed a threat to the United States. However, the partisan divide seemingly widened following the strike on Soleimani. Democrats criticized the lack of intelligence and the shifting statements by officials. At the same time, Republicans argued that Soleimani posed a real threat to the US and had to be taken down—going so far as to claim that their disapproval of Trump blinded Democrats from seeing the genuine national security value behind the operation.⁸⁸² There were, still, several Democrats, as well as some Republicans, who have argued that the intelligence they were given was insufficient and did not show any evidence of an imminent threat or indeed of the supposed embassy plots.⁸⁸³ Embassy plots are a sensitive issue given the considerable controversy generated by the deadly attacks on American compounds in Libya during the previous decade.

The Trump administration has not backed down, despite challenges to its narrative. Instead, it has repeatedly characterized the Soleimani strike within their right of self-defence. Sharing in their fellow citizens' sentiment, several government officials have also voiced their opinions on the strike. Following 'classified briefings on Capitol Hill, numerous lawmakers from both parties claimed that the administration had failed to present direct evidence of an 'imminent threat,' even when they asked repeatedly and directly.'⁸⁸⁴

Several Democratic and Republican lawmakers 'expressed dissatisfaction with the administration's briefing on the strike against Soleimani.' Democratic Senator Elizabeth Warren of Massachusetts simply replied 'no' when asked if the evidence presented during the intelligence briefing convinced her. She further claimed that there was inadequate evidence to show that Soleimani had in fact posed an imminent threat to the United States.⁸⁸⁵ Similarly, Representative Gerald E. Connolly expressed his concern with the lack of adequate intelligence surrounding the

⁸⁸² Morgan Chalifant and Brett Samuels, 'Trump Says it Doesn't Matter If Soleimani Posed an Imminent Threat,' *The Hill*, 13 January 2020.

⁸⁸³ Baker and Gibbons-Neff, 'Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again.'

⁸⁸⁴ Alex Emmons, 'US Strike on Iranian Commander in Yemen the Night of Suleimani's Assassination Killed the Wrong Man,' *The Intercept*, 10 January 2020.

⁸⁸⁵ Sonam Sheth, 'State Department was Reportedly Unaware of an 'Imminent Threat' to 4 US Embassies, Blowing a Hole Through Trump's Claims,' *Business Insider*, 13 January 2020.

strike. During an interview on C-Span, Connolly called the intelligence presented in the Iran brief as ‘sophomoric and utterly unconvincing.’ He has since been unwavering in his belief that the Trump administration is ‘after the fact trying to piece together a rationale for its action that was impulsive, reckless and put this country’s security at risk.’⁸⁸⁶

But he was not alone. Democratic Representative Pramila Jayapal echoed the same sentiment, going further to state on record that there ‘was no raw evidence presented that this was an imminent threat.’⁸⁸⁷ Notably, Democrats were not the only ones to blow the whistle. Following the intelligence briefing, Republican Senator Mike Lee of Utah still found it difficult to ‘ascertain specific details of the imminence of the attack.’ Noting that he believed ‘that the briefers and the president believed that they had a basis for concluding that there was an imminent attack...but [that] it [was] frustrating to be told that and not get the details behind it.’⁸⁸⁸ In the absence of this intelligence, the administration politely responded to these feelings by telling them, in other words, to ‘get over it.’

Robert O’ Brien told Fox News that congressional members who disapproved of the brief should just ‘trust the administration.’ In an interview with Fox News, O’Brien called the intelligence ‘very strong’ but confessed that as much as he ‘would love to release the intelligence and show the American people... I can tell you they can trust the administration on this... Unfortunately, we do not want to lose that valuable stream of intelligence that will allow us to protect Americans going forward.’⁸⁸⁹ Instead, it seems they would rather lose the ‘invaluable’ stream of legitimacy and trust afforded to them by the public and their congressional representatives.

Rukmini Callimachi, a journalist for *The New York Times*, reported that the available intelligence presented to US government officials regarding the potential imminent threat

⁸⁸⁶ Transcript, ‘Representative Connolly Reaction to Iran Briefing,’ *C-Span*, 08 January 2020 <<https://www.c-span.org/video/?467940-2/representative-connolly-reaction-iran-briefing>>.

⁸⁸⁷ Pramila Jayapal via Twitter on 08 January 2020 <<https://twitter.com/RepJayapal/status/1215128707221917696?s=20>>.

⁸⁸⁸ Transcript, ‘Interview with Sen. Mike Lee (R-UT),’ *CNN*, 12 January 2020 <<http://transcripts.cnn.com/TRANSCRIPTS/2001/12/sotu.01.html>>.

⁸⁸⁹ Transcript, ‘Interview with Robert O’ Brien,’ *Fox News*, 12 January 2020.

Soleimani posed was ‘razor-thin.’⁸⁹⁰ Going further to reveal that one of her sources, a high-ranking US government official, views ‘the reading of the intelligence as an illogical leap.’⁸⁹¹ Several anonymous intelligence officials have similarly revealed that there ‘was no single definitive piece of information about a coming attack. Instead, CIA officers described a “mosaic effect,” [comprised of] multiple scraps of information that came together indicating that General Soleimani was organizing proxy forces around the region, including in Lebanon, Yemen and Iraq, to attack American embassies and bases.’⁸⁹²

These ‘scraps,’ however, were not enough to convince House Speaker Nancy Pelosi. On ABC’s ‘This Week,’ she revealed that she did not think ‘the administration [had] been straight with Congress’ about the motivations behind the drone strike that killed Soleimani.⁸⁹³ Pelosi was the first to accuse the administration of possibly lying to Congress and the American people. However, she would not be the last. Shortly after her statement, Adam Schiff, Chairman of the House Intelligence Committee, accused the President and his administration of ‘fudging’ the intelligence to justify their actions after the fact. Noting that he believed that the Trump administration was ‘overstating and exaggerating what the intelligence shows. In the view of the briefers, there was plotting, there was an effort to escalate being planned, but they didn’t have specificity.’⁸⁹⁴

These observations, though harsh, were somewhat warranted. For ten days following the strike, the Trump administrations’ explanations for why they decided to kill Soleimani seemingly ‘shifted by the day, and sometimes by the hour.’⁸⁹⁵ Dr William Inboden, Executive Director of the Clements Center for History, Strategy, and Statecraft at the University of Texas, has suggested that Trump’s ‘casual’ relationship with the truth is seriously impairing the administrations’

⁸⁹⁰ Rukmini Callimachi via Twitter on 04 January 2020
<<https://twitter.com/rcallimachi/status/1213421769777909761?s=20>>.

⁸⁹¹ Rukmini Callimachi via Twitter on 04 January 2020
<<https://twitter.com/rcallimachi/status/1213425231055982592?s=20>>.

⁸⁹² Baker and Gibbons-Neff, ‘Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again.’

⁸⁹³ Transcript, ‘House Speaker Nancy Pelosi on This Week,’ *ABC News*, 12 January 2020.

⁸⁹⁴ Transcript, ‘Rep. Adam Schiff on Face the Nation,’ *CBS News*, 12 January 2020.

⁸⁹⁵ Baker and Gibbons-Neff, ‘Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again.’

credibility. So much so that even when Trump makes the right policy choice, his shifting statements end up widening the credibility gap.⁸⁹⁶ Inboden, therefore, raises the possibility that, given the general confusion of the Trump White House, they may have some sort of case to make, but presented it poorly, reflecting the abiding chaos ‘in the room.’

Curiously, the White House sent an unclassified memo to Congress defending the president’s decision to kill Soleimani. In part, it noted that ‘[t]he purposes of this action were to protect United States personnel, to deter from conducting or supporting further attacks against United States forces and interests, to degrade Iran’s and Quds Force-back [sic] militia’s ability to conduct attacks, and to end Iran’s strategic escalation of attacks.’ But the memo made *no mention* of imminent threats or the calculated risk of fallout in assassinating an active government official of a foreign state. Eliot Engel, the Chairman of the House Committee on Foreign Affairs, referred to the memo as ‘directly contradict[ing] the president’s false assertion that he attacked Iran to prevent an imminent attack against United States personnel and embassies.’ He concluded that ‘[t]he administration’s explanation in this report makes no mention of any imminent threat and shows that the justification the President offered to the American people was false, plain and simple.’⁸⁹⁷ It seems like this memo was one of the rare instances where Trump’s extrapolations of the truth are not permitted—and the truth, sadly enough, does not stand up to even the weakest of challenges.

Depending on the venue, the strike's justifications were twisted to better appeal to those in attendance. According to some press reports, Trump’s statements have ‘muddied the waters, putting officials on the defensive as they seek to explain his decision. At times, top officials have oscillated between suggesting the strike was in retaliation for Iran’s escalatory behaviour in the region and pointing to an ‘imminent’ threat to American lives—but without providing many details.’⁸⁹⁸ According to Jennifer Rubin, a conservative political columnist, the ‘ever-shifting explanations for Trump’s conduct are emblematic of how his utter lack of credibility in the national security realm has come back to haunt him. He has gone from smearing the intelligence

⁸⁹⁶ Chalifant and Samuels, ‘Trump Says it Doesn’t Matter If Soleimani Posed an Imminent Threat.’

⁸⁹⁷ Stepansky, ‘Timeline of Trump’s Shifting Justifications for Soleimani Killing.’

⁸⁹⁸ Chalifant and Samuels, ‘Trump Says it Doesn’t Matter If Soleimani Posed an Imminent Threat.’

community, to praising it, to inventing intelligence.’ Since being elected, Trump has had ‘a consistent pattern of misleading the public and out-and-out lying.’ She adds that he has ignored uncontroverted intelligence, ‘hyped false allegations and now given what seems like a false justification for launching offensive military action without congressional authorization.’

Arguably, Congress must also address this issue in the context of war power, an area neglected since 9/11, leading to increasing confusion about what is in fact ‘war.’ For instance, by US law, Congress must approve military force unless in a demonstrable self-defence case.⁸⁹⁹ The 1973 War Powers act, reacting to revelations about the Tonkin Gulf, attempted to restrain the president's power. But following the September 11th attacks, these constraints were generally relaxed. As a result of these inconsistent official statements and rising tensions with Iran resulting from the Soleimani strike, the House passed a non-binding resolution on January 9th 2020, to limit the President's ability to launch an attack against Iran without the knowledge and approval of Congress⁹⁰⁰—which Trump quickly vetoed.⁹⁰¹ Although ‘habitual lying is rarely impeachable, it should prompt a heightened oversight in national security, including a full accounting of the president’s and secretary of state’s misstatements...Congress can deny funding for purely offensive action against Iran absent appropriate consultation with the Gang of Eight.’⁹⁰² Perhaps this is the next step unless, of course, Trump vetoes this as well. Nevertheless, Trump cannot change the perceived illegitimacy of his administrations’ actions against Soleimani.⁹⁰³

⁸⁹⁹ Jennifer Rubin, ‘This Might be Trump’s Worst Lie Ever,’ *The Washington Post*, 13 January 2020.

⁹⁰⁰ US Congress, ‘H. Con.Res.83: Directing the President Pursuant to Section 5(c) of the War Powers Resolution to Terminate the Use of United States Armed Forces to Engage in Hostilities In Or Against Iran,’ US Congress, 09 January 2020 (‘his concurrent resolution directs the President to terminate the use of US Armed Forces in hostilities against Iran unless (1) Congress has declared war or specifically authorized such use in statute, or (2) such use is necessary and appropriate to defend against an imminent armed attack upon the United States.’) <<https://www.congress.gov/bill/116th-congress/house-concurrent-resolution/83/all-info>>; also refer to Our Government: The Legislative Branch, The White House <<https://www.whitehouse.gov/about-the-white-house/the-legislative-branch/>>.

⁹⁰¹ Connor O’Brien, ‘Trump Vetoes Bill to Curtail His Iran War-Making Authority,’ *Politico*, 06 May 2020.

⁹⁰² Rubin, ‘This Might be Trump’s Worst Lie Ever.’

⁹⁰³ It is important to recognize that Congress effectively abandoned its control over these things under the Bush administration between 2001 and 2008.

Shifting statements and a refusal to present intelligence have raised more questions than they have answered.⁹⁰⁴ So, was there evidence of an imminent attack? Did Soleimani identify four embassies as potential targets for such attacks? Or is this another case of Trump crying wolf? Perhaps we might never really know. However, what is certain is that the Trump administration has become quite limber at bending the truth.

The Inconvenient Truth: Evidence of a Larger Op

According to US officials, Soleimani was not the only Iranian official to be targeted on January 3rd, 2020. In Yemen, Abdulreza Shahlai, a senior Iranian military official, was targeted by US drone, but survived the attack.⁹⁰⁵ Predictably, following the failed attempt on his life, Shahlai went into hiding.⁹⁰⁶ Notably, the attack on Soleimani was not a deviation from the norm, as the United States has targeted several officials in Iraq. The operation which sought to eliminate Shahlai in Yemen, however, was entirely unexpected. For years, the Pentagon had chosen to refrain from meddling in conflicts between Yemeni rebels in the Houthi forces and those supported by the Saudi-led coalition. However, with the United Nations applying more significant pressure to attempt and quell the violence in Yemen, the US saw it as one of the last remaining opportunities to strike during a time of uncertainty and general chaos.⁹⁰⁷ During peace, this operation would have been unlikely to be authorized as there would have been the potential of greater attention and scrutiny to their actions.

Shahlai was a commander in Iran's Quds Force in Yemen and a financial backer of the Iranian regime, who had also been linked to the 2007 kidnapping and assassination of five American soldiers in Karbala during the US occupation in Iraq.⁹⁰⁸ Mick Mulroy, the former

⁹⁰⁴ Stepansky, 'Timeline of Trump's Shifting Justifications for Soleimani Killing.'

⁹⁰⁵ James Gordon Meek et al., 'US Tried to Kill Iranian Commander in Yemen Same Night as Soleimani Strike: Officials,' *ABC News*, 10 January 2020.

⁹⁰⁶ Alex Emmons, 'US Strike on Iranian Commander in Yemen the Night of Suleimani's Assassination Killed the Wrong Man,' *The Intercept*, 10 January 2020.

⁹⁰⁷ Hudson, Ryan and Dawsey, 'On the Day US Forces Killed Soleimani, They Targeted A Senior Iranian Official in Yemen.'

⁹⁰⁸ Katherine Zimmerman, 'Iran's Man in Yemen and the al Houthis,' *American Enterprise Institute on Foreign and Defence Policy*, 16 January 2020.

Deputy Assistant Secretary of Defence for Mideast policy, reported that ‘Shahlai was a close confidante of Soleimani and an operational commander responsible for commanders in key countries—Iraq, Syria, Yemen and Lebanon. Those commanders would then carry out attacks in those countries.’ He was also responsible for Iran’s operations in Yemen, including the flow of weapons to Iranian-backed Houthi rebels, according to a former counter-terrorism official. Mulroy added that ‘as a Quds commander [Shahlai] also carried out Soleimani’s campaign in Iraq in the mid-2000s that killed hundreds of Americans.’⁹⁰⁹

In 2007, the US Department of Treasury offered a \$15 million reward under its ‘Rewards for Justice’ programme for Shahlai’s capture. It accused him of ‘a long history of targeting Americans and US allies globally,’ which included the targeting and assassination of US soldiers in Iraq. The relatively ‘unsuccessful operation against Shahlai may indicate that the Trump administration’s killing of Soleimani... was part of a broader operation than previously explained, raising questions about whether the mission was designed to cripple the leadership of the IRGC or solely to prevent an imminent attack on Americans as originally stated.’⁹¹⁰

A year later, in 2008, he and Soleimani were sanctioned by the US for their alleged involvement in a plot to assassinate Adel al-Jubeir, the former Saudi ambassador to the US, while he was at a restaurant in Washington. Immediately following the strike, the US penned a letter to the UN Security Council, justifying its actions taken against Soleimani. In it, the US noted that it had ‘undertaken certain actions in the exercises of its inherent right of self-defence,’ which ‘include’ the strike on Soleimani.⁹¹¹ The plural form of ‘actions’ implies that there was more than one operation that night. The letter also does not solely refer to the Soleimani strike. Instead, it mentioned it as an example. The letter’s deliberate wording suggests that the Soleimani strike was one of at least two significant missions undertaken that day. The second could be understood as the failed strike on Shahlai. But was there a third operation? Or a fourth? These revelations

⁹⁰⁹ Meek et al., ‘US Tried to Kill Iranian Commander in Yemen Same Night as Soleimani Strike: Officials.’

⁹¹⁰ Al Jazeera Staff, ‘US Targeted Iranian Official in Yemen in Failed Strike,’ *Al Jazeera*, 10 January 2020.

⁹¹¹ Emmons, ‘US Strike on Iranian Commander in Yemen the Night of Suleimani’s Assassination Killed the Wrong Man.’

continuously erode the US claim that Soleimani was targeted legitimately under the US right of preemptive self-defence.

The failed strike raises questions about the true motivations behind the targeted killing of Soleimani. Was it genuinely to thwart an imminent plot orchestrated by key senior Iranian officials in multiple countries, or were the attacks designed to debilitate the Iranian regime and perhaps provide a catalyst for internal protests and an eventual coup? If Soleimani was killed in self-defence, as the Trump administration vehemently claims, then why was Shahlai targeted in the same manner on the same day? Did he play a role in the ‘imminent threat’ referred to by the US government? If so, doesn’t this threat exist as long as Shahlai is still alive?

This view is shared by Suzanne Maloney, an Iran scholar at the Brookings Institution, who argued that the targeting of two senior Iranian officials ‘suggests a mission with a longer planning horizon and a larger objective, and it really does call into question why there was an attempt to explain this publicly on the basis of an imminent threat.’ The failed strike on Shahlai effectively challenges the US narrative. If both individuals were targeted on the same day, in the same manner, it would stand to reason that both posed the same level of threat, which would therefore warrant their coinciding executions. However, if one was killed, but the other survived, would the threat Shahlai posed not continue? It could even be argued that the threat would increase as the surviving target would use the martyring of his compatriot as additional motivation from which to launch attacks or, at the very least, increase the recruitment of sympathizers.⁹¹²

Alex Emmons, a National Security Reporter for *The Intercept*, recounted how the Trump administration had ‘contemplated killing Shahlai for three years, as a means of deterring further Iranian support for the Houthis in Yemen.’ Yet, it is ‘the attempt to assassinate him on the night of January 2 [which] seems to undercut the government’s stated rationale for killing Soleimani, whom US officials have repeatedly described as posing ‘an imminent threat’ to US forces in Iraq.’⁹¹³ In response to the failed strike, Representative Ro Khanna (D-Calif) tweeted that

⁹¹² Hudson, Ryan and Dawsey, ‘On the Day US Forces Killed Soleimani, They Targeted A Senior Iranian Official in Yemen.’

⁹¹³ Emmons, ‘US Strike on Iranian Commander in Yemen the Night of Suleimani’s Assassination Killed the Wrong Man.’

‘Congress needs answers. What was the full extent of the Trump administration’s plans to kill Iranian officials? How does the attempted killing in Yemen have anything to do with an imminent threat?’⁹¹⁴ Since Congress has yet to authorize any US military action against Iran, officials may seek to question the legal basis for the second strike against Shahlai.⁹¹⁵

Despite calls for answers emanating from all levels of government, the Trump administration has been less than willing to answer them. As a matter of both policy and necessity, the US has chosen to keep its ‘operations in Yemen, where a civil war has created the world’s worst humanitarian crisis’ shrouded in secrecy.⁹¹⁶ Furthermore, US officials have ruled the operation against Shahlai as highly classified, silencing its officials from divulging details regarding the operation or its motivations.⁹¹⁷

Additionally, the Pentagon had refused to refer to the Shahlai strike when it reported the ‘successful’ Soleimani targeted killing.⁹¹⁸ In the absence of official confirmation, what remains certain is that, on the night of January 3rd, the US sent drones to Yemen and Iraq to eliminate Soleimani and Shahlai. One operation was successful, while the other was not. Did these individuals threaten the peace, security or interests of the United States? Or did they serve as prime stress points from which to cripple the Iranian regime? Had both strikes been successful, senior military officials at the Pentagon would have announced them together. Despite both operations being simultaneously launched, only the successful Soleimani mission was reported.⁹¹⁹

From Prevention to Deterrence

⁹¹⁴ Ro Khanna via Twitter, 10 January 2020

<<https://twitter.com/RepRoKhanna/status/1215702675108564993?s=20>>.

⁹¹⁵ Emmons, ‘US Strike on Iranian Commander in Yemen the Night of Suleimani’s Assassination Killed the Wrong Man.’

⁹¹⁶ Hudson, Ryan and Dawsey, ‘On the Day US Forces Killed Soleimani, They Targeted A Senior Iranian Official in Yemen.’

⁹¹⁷ Al Jazeera Staff, ‘US Targeted Iranian Official in Yemen in Failed Strike,’ *Al Jazeera*, 10 January 2020.

⁹¹⁸ Meek et al., ‘US Tried to Kill Iranian Commander in Yemen Same Night as Soleimani Strike: Officials.’

⁹¹⁹ Hudson, Ryan and Dawsey, ‘On the Day US Forces Killed Soleimani, They Targeted A Senior Iranian Official in Yemen.’

The US has conceptually muddled the understanding of ‘imminence.’ It has now become clear that the Trump administration uses it more as a rhetorical device than a temporal legal concept. Imminence traditionally refers to a threat that is already underway, requiring a rapid response to address the incoming attack (already in progress or at a late stage of preparation). The US has reconceptualized it to mean that a response is immediate, even if the likelihood of a threat materializing remains unknown. In the Soleimani case, the threat he posed could not have been imminent (even in a causal sense) since there was no proof that Iran had decided upon any particular course of action.⁹²⁰

According to Professor Marko Milanovic from the University of Nottingham School of Law, the United States would have a rather difficult time meeting the criteria necessary to prove that the attack on Soleimani was legitimate. At present, there remain ‘serious doubts that there even was an imminent attack.’ Milanovic has argued that the US has shot itself in the foot by not releasing credible intelligence, which casts doubt on the drone programme's validity and accountability under CIA control.⁹²¹

If no evidence or intelligence is presented (other than unfounded claims and statements made by US officials) to indicate that an imminent attack was in the works, then the US would be in breach of Article 2(4) of the UN Charter on the prohibition on the use of force against both Iran and Iraq.⁹²² As if the circumstance were not already muddled with shifting statements, unavailable intelligence, and unproven imminence, Trump decided to take to Twitter. The President found it a worthwhile endeavour to threaten Iran against threatening the United States. In a time of escalating tensions, further threats were unnecessary. The tweets were themselves fascinating since, after the strike on Soleimani, he tweeted out a direct and unambiguous threat against Iran.⁹²³ The original

⁹²⁰ See Marko Milanovic, ‘The Soleimani Strike and Self-Defence Against an Imminent Armed Attack,’ *European Journal of International Law*, 07 January 2020, pp. 2-5.

⁹²¹ Milanovic, ‘The Soleimani Strike and Self-Defence Against an Imminent Armed Attack,’ pp. 1-4.

⁹²² Ibid, p. 1.

⁹²³ Donald J. Trump via Twitter on 04 January 2020

<<https://twitter.com/realDonaldTrump/status/1213593975732527112?s=20>>.

tweet did not mince words—Trump clearly threatened to target Iranian cultural sites.⁹²⁴ Later, he claimed it was a warning addressed at Iran to persuade them against avenging Soleimani, for if they did, the US would attack several of their cultural sites. However, despite Trump’s alleged motivations for the tweet, its content nonetheless infringes both *jus in bello* and *jus ad bellum* principles. Trump has since tried to justify the threat, reasoning in part that since Iran has killed Americans in the past, the US should be allowed to destroy some of their cultural sites.⁹²⁵ Unfortunately for Trump, this is not how international law works. His tweet still violated international humanitarian law, and some legal scholars have even argued that it can be categorized as a war crime.

Sometimes it seems as though the Trump administration is living in the past, perhaps in an era of gunboat diplomacy. It has threatened Iran with fifty-two missile strikes for each American held in Iran for 444 days during the historic Iran hostage crisis from November 4th, 1979 to January 20th, 1981.⁹²⁶ It targeted Soleimani based on his history as a terrorist, despite the absence of any current intelligence supporting this claim. Trump even argued that proving the imminence of any plot involving Soleimani was unnecessary as his ‘terrible past’ would be sufficient reason enough.

Further issues flow from the expected fallout triggered by a state’s pre-attack self-defence operation. It is impossible to determine, without concrete knowledge of the future, if preemptive self-defence would be useful or detrimental to the goal of mitigating the existing threat. However, it may be possible to achieve a certain degree of objective evaluation when a state uses force against resources or assets critical to the plot in question. It can be logically deduced that

⁹²⁴ Donald J. Trump via Twitter on 04 January 2020

<https://twitter.com/realDonaldTrump/status/1213593975732527112?s=20> (Trump claimed he would target ‘52 Iranian sites (representing the 52 American hostages taken by Iran many years ago), some at a very high level & important to Iran & the Iranian culture, and those targets, and Iran itself, WILL BE HIT VERY FAST AND VERY HARD. The USA wants no more threats!’)

⁹²⁵ Maggie Haberman, ‘Trump Threatens Iranian Cultural Sites, and Warns of Sanctions on Iraq,’ *New York Times*, 05 January 2020 (Trump: Iran is ‘allowed to kill our people. They’re allowed to torture and maim our people. They’re allowed to use roadside bombs and blow up our people. And we’re not allowed to touch their cultural site? It doesn’t work that way.’)

⁹²⁶ US Department of Defence, ‘The Iranian Hostage Crisis,’ Office of the Historian, *Foreign Service Institute*, <<https://history.state.gov/departmenthistory/short-history/iraniancrises>>.

destroying a weapons cache or bombing tanks could prevent an attack from taking place. The same cannot be said of targeting individuals. The fallout from such an action can differ considerably, depending on the audience. For instance, the targeted killing of Soleimani resulted in different reactions from the US and Iran. It is quite evident that ‘Soleimani’s killing has the exact opposite effect on Iran’s leadership, which has publicly committed to avenging him.’⁹²⁷ Not all failed attempts at preemptive self-defence mean that the decision to engage in such was, as a result, illegitimate.⁹²⁸ Instead, the issue is with a state attempting to claim some form of pre-attack self-defence without knowing whether their action(s) would prevent the imminent threat from materializing. If this cannot be adequately demonstrated nor anticipated, then neither the concepts of necessity nor proportionality can be demonstrable in this case.⁹²⁹

This, in turn, leads to the vexed question of open secrecy and implausible deniability. Why do states increasingly choose to publicize actions by their covert services? Since the CIA led the drone operation that killed Soleimani, why did the US choose to publicize the strike? Why not keep the strike under wraps from the public? The supposed threat was eliminated. Why advertise it and open the administration up to legal challenge and criticism by domestic and international legal organizations, threats of retaliation from the targeted countries and rising criticism from the wider international community? Why not focus on a clandestine operation aimed at dismantling the plot? Moreover, the use of a drone to underline the US claim of preemptive self-defence is equally problematic. If a threat were in fact ‘imminent,’ then Soleimani would have been just one facet of a larger plot—so taking him, and only him, out by drone casts ‘serious doubts that the method the US chose to resist that supposed attack was necessary under the circumstances.’⁹³⁰

So then why publicly kill an individual whose political position and supposed extremist role would result in his martyring, and that might, in turn, incite anger, calls for revenge, amongst other issues like increased recruitment and radicalization? Had the strike been kept secret, the US could have sought plausible deniability. It certainly would not be the first case of a covert US drone operation, especially considering that the CIA conducts these somewhat regularly. The first

⁹²⁷ Milanovic, ‘The Soleimani Strike and Self-Defence Against an Imminent Armed Attack,’ p. 4.

⁹²⁸ See also Arend, ‘International Law and the Preemptive Use of Military Force,’ pp. 89-103.

⁹²⁹ See Arend, ‘International Law and the Preemptive Use of Military Force,’ pp. 92-98.

⁹³⁰ Milanovic, ‘The Soleimani Strike and Self-Defence Against an Imminent Armed Attack,’ p. 1.

error was choosing to strike Soleimani without overwhelming, undeniable evidence demonstrating his involvement in an imminent terror plot. The second was choosing to target Soleimani while he was in Iraq, a sovereign third-party state. The third was publicly announcing that they engaged in this operation. The reasons for this could stem from Trump's need to match Obama's execution of Osama bin Laden during his term. However, the benefits of publicizing such a controversial and legally unstable strike against Soleimani are far outmatched by the negative consequences which occurred, and are still transpiring. If Trump wanted to take the credit for eliminating the supposed terror threat Soleimani posed, there were other less controversial ways to do so.

Non-violent alternatives exist. There are quite a few ways to disrupt an imminent attack without resorting to violence. Two main methods will be examined here as they could have been implemented to target Soleimani. The first method is to target those directly involved and critical to the plot in question. The second is to target the resources necessary for the plot to materialize. By acting in self-defence against the individuals critical to the plot, it 'disrupts the attacker's ability to pursue the attack.' By eliminating their access to resources and assets, it disrupts their will or ability to proceed with the plot.⁹³¹ Some countries denounce the US strike against Soleimani but still support the customary international law allowing pre-attack self-defence. So why do countries still advocate for pre-attack self-defence if they rarely use it?⁹³² Building upon the earlier discussion from chapter three, it seems as though most scholars point to three reasons for this position. The first is deterrence. If other countries are aware of your affinity and acceptance of this form of self-defence, then they would think twice before attempting to plot any attack against your state. Hence, deterrence is achieved. However, due to 'its enormous potential for escalation, even with the constraining influence of necessity and proportionality, the deterrence rationale should be categorically excluded from the legitimate scope of self-defence.'⁹³³

⁹³¹ Milanovic, 'The Soleimani Strike and Self-Defence Against an Imminent Armed Attack,' pp. 3-4.

⁹³² See Andrew Garwood-Gowers, 'Israel's Airstrike on Syria's Al-Kibar Facility: A Test Case for the Doctrine of Preemptive Self-Defence?' *Journal of Conflict & Security Law*, Vol.16, No.2, (2011), p. 276; see also Deeks, 'Taming the Doctrine of Pre-Emption,' p. 676.

⁹³³ Milanovic, 'The Soleimani Strike and Self-Defence Against an Imminent Armed Attack,' p. 4.

The second reason relies on desensitization and familiarity. If the public and the media are aware of this potential option, then a certain level of acceptance would be achieved. Having public acceptance or awareness of such a policy would be invaluable should a circumstance warrant its use. The last thing a government would need during an elevated threat level would be public backlash for their resort to this form of attack. Lastly, anticipation and preparation for future threats is the third reason why countries still support pre-attack self-defence, despite its issues. By publicly acknowledging that this policy is an acceptable defence method, then there would certainly be time and money spent on further developing and preparing guidelines for its implementation in the future, if need be. Thus, ensuring that the state would be prepared for any such future threats.

For the Soleimani strike to be viewed as legitimate, a few conditions should be met. First, the US must demonstrate that Soleimani posed an operational, rather than simply a strategic role in an extremist organization that was plotting imminent attacks against their interests and citizens. Second, that Iran was involved and determined to have these plots against the US materialize. Third, killing Soleimani was the only way by which to disrupt the plot already in progress. Fourth, the use of unmanned drones fulfilled both the requirements of necessity and proportionality. Fifth, the strike in Iraq was necessary, demonstrating sufficient evidentiary support that no other time or place would have been similarly acceptable. It is widely accepted that Soleimani's role 'was in providing strategic direction and material to Iranian proxies in Iraq, not in the execution of specific operations.' So, while it is possible that Soleimani 'did have a concrete operational impact on some planned attack by Iran, the US has offered no evidence that such was the case.'⁹³⁴

Jon Bateman, a former special assistant to the Chairman of the Joint Chiefs of Staff and specialist on Iran, argued that '[t]here may well have been an ongoing plot as Pompeo claims, but Soleimani was a decision-maker, not an operational asset himself... Killing him would be neither necessary nor sufficient to disrupt the operational progression of an imminent plot. What it might do instead is shock Iran's decision calculus,' to dissuade potential future plots.⁹³⁵

⁹³⁴ Ibid, pp. 3-4.

⁹³⁵ Hudson, Ryan and Dawsey, 'On the Day US Forces Killed Soleimani, They Targeted A Senior Iranian Official in Yemen.'

This section will posit that in the case of the Soleimani strike, the US should have abided by the directive set forth by Sun Tzu in *The Art of War*, which reminded leaders that ‘all warfare is based on deception.’ Hence, when we are able to attack, we must seem unable; when using our forces, we must appear inactive; when we are near, we must make the enemy believe we are far away; when far away, we must make him believe we are near.’⁹³⁶ Informed by the findings of Prof. Daniel Sobelman, the purpose of this discussion will be to demonstrate that when contentious policies or operations cannot be avoided, they should nonetheless be kept covert to avoid the negative repercussions which might result from their application.

Perhaps the United States should consider taking a page out of Hezbollah’s strategic playbook. Sobelman discovered that ‘[t]he distinction between Hizbollah’s official, declared activity and its covert activity is important since the organization wants to bestow an aura of legitimacy on its official activity at the local... [and] international level.’⁹³⁷ Historically, the CIA has long engaged in a series of covert operations, many of which were likely morally contentious or legally objectionable. However, by keeping such activities secret, the agency avoided the negative consequences of more public activities.⁹³⁸

Yet, despite being conducted by the CIA, the Soleimani strike was then reported to the public by the highest levels of the US government—defeating the purpose of having a clandestine agency carry out the attack. Following this announcement, the mission’s operational successes were quickly overshadowed by the fallout which ensued.⁹³⁹ Paradoxically, this has become a foreign policy trend that has been adopted by some states, including Putin’s Russia. Professors Rory Cormac and Richard J. Aldrich authored an insightful piece in which they examined the

⁹³⁶ Sun Tzu, *The Art of War*, Book 1, Line 18-19, (Filiquarian Press, Reprinted 2007).

⁹³⁷ Sobelman, ‘Hezbollah’s Arsenal and Means of Deterrence,’ p. 84.

⁹³⁸ See Austin Carson, *Secret Wars: Covert Conflict in International Politics*, (Princeton University Press, 2018).

⁹³⁹ See Alexander B. Downes and Mary Lauren Lilley, ‘Overt Peace, Covert War? Covert Intervention and the Democratic Peace,’ *Journal of Security Studies*, Vol. 19, Issue 2, 21 May 2010, pp. 266-306.

historical intersection of covert action and implausible deniability.⁹⁴⁰ Contrary to common belief, plausible deniability has never been a foolproof tool in statecraft. Denying involvement in a covert operation has always been problematic and has become even more so in recent decades with the ease of media dissemination and anonymous intelligence leaks.⁹⁴¹ Still, nations and their leaders have continuously chosen to fall back into this habit despite the ambiguity and challenges it fosters. In some recent cases, nations that have interfered in other states' affairs have chosen to acknowledge their involvement no longer.⁹⁴² Even in cases where evidence of this meddling exists, states have favoured against providing comment on their involvement as there is no credible excuse or avenue for denial left that might explain their actions.⁹⁴³ It is for this reason that plausible deniability has slowly evolved into implausible deniability.

In the Soleimani strike, several critics challenged the US operation's motivations, the legal justification provided by the Trump administration, and even the strategic efficacy of the strike itself. These combined challenges served to publicly degrade the US counter-terror program's perceived legitimacy and its drone campaign's reputation. Making the Soleimani strike public was one very significant error on the part of the administration. Perhaps Trump decided to announce the Soleimani win for other motives, like garnering support for the upcoming election or matching his predecessor's strategic 'wins.'⁹⁴⁴ Still, if Soleimani posed an impending threat, as the Trump administration contends, then the elimination of the general should have served as a sufficient win for the national security of the country. Why publicly advertise this?

⁹⁴⁰ Rory Cormac and Richard J. Aldrich, 'Grey is the New Black: Covert Action and Implausible Deniability,' *International Affairs*, Vol. 94, Issue 3, May 2018, pp. 477–494

⁹⁴¹ See also Michael Poznansky, 'Revisiting Plausible Deniability,' *Journal of Strategic Studies*, 02 March 2020.

⁹⁴² Cormac and Aldrich, 'Grey is the New Black: Covert Action and Implausible Deniability,' pp. 477–494.

⁹⁴³ For greater discussion on this topic see Rory Cormac, *Disrupt and Deny: Spies, Special Forces, and the Secret Pursuit of British Foreign Policy* (Oxford: Oxford University Press, 2018).

⁹⁴⁴ Anthony Zurcher, 'Could the Killing of Iranian General Help Trump Get Re-Elected,' *BBC News*, 06 January 2020; see also Donald J. Trump via Twitter on 29 November 2011 ('In order to get elected, @BarackObama will start a war with Iran') <<https://twitter.com/realDonaldTrump/status/141604554855825408?s=20>>.

Hezbollah, for instance, has opted to conduct most of its business covertly, resulting in an improvement in ‘its intelligence and operational ability.’ By publicizing a covert operation, Trump threatened the drone programme by potentially opening its counterterror programme to greater international legal scrutiny, certainly garnering greater attention from UN rapporteurs. In this case, a few moments of publicity cost the US dearly. Israel was faced with a similar situation following the operation which eliminated Mughniyeh in 2008. At the time, Israel could have covertly killed ‘most senior Hizbollah members,’ including the top operations figures. Seasoned observers suggest that the fact that such actions have not occurred may indicate that ‘in the profit and loss equation, the profit does not exceed and therefore justify the loss.’⁹⁴⁵ For Israel, even the covert elimination of a few Hezbollah leaders was too politically costly to undertake. It seems as though the United States did not undertake a measured debate drawing on collective wisdom, and this may have been a decision driven more by a few individuals.

The Trump administration erred in five critical ways. First, they launched a clandestine operation, only to later publicly announce it. Second, their selected target was a foreign government official. Third, the US did not consult with the UN Security Council, or, at the very least, Congress. Fourth, no credible proof was presented to corroborate the alleged imminent threat the target posed. Fifth, the operation was executed within a third-party state, without its knowledge nor authorization. These are five additional factors that were known before the Soleimani strike was authorized. Any of them could have reasonably been understood as posing significant risks to the mission objective—therefore warranting, at the very least, a pause for revision on the operation in question.

Israel did not have to deal with these five factors within their risk assessment, and it still chose against launching any operations. With these additional considerations, it is still remarkable that given the high degree of risk and relative certainty of negative fallout, the Trump administration still chose to launch the strike on Soleimani—and later advertise it. The Soleimani risk assessment could have been improved had the mission remained covert, and therefore conduct the strike under Title 50 authorities.⁹⁴⁶ Undertaking such an assessment, even if symbolic, would

⁹⁴⁵ Sobelman, ‘Hezbollah’s Arsenal and Means of Deterrence,’ pp. 84-88.

⁹⁴⁶ US Code, ‘Title 10: Armed Forces,’ *Cornell Law School*, Accessed at:

have afforded the US a chance at plausible deniability.⁹⁴⁷ The Covert Action Statute (CAS), preserved under Title 50 of the US Code, defines ‘covert action’ as an activity or activities conducted abroad by the US government, intended to remain secret, and therefore ‘not be apparent or acknowledged publicly.’⁹⁴⁸

This is not the first time that the United States has opted for what might be called overt covert action. But by executing the Soleimani strike under Title 10, it made the operation known—and thus vulnerable to criticism and ensuing political consequences.⁹⁴⁹ Thus, when in doubt, the US would have stood to benefit from keeping their contentious practices and operations covert. In going public with the Soleimani operation, the US essentially shot itself in the foot, its drone programme in the head, its allies in the back and its legitimacy in the heart.

When All Else Fails: Preemptive Self-Defence

As we have seen, the intelligence presented by the United States on the drone strike, which killed Soleimani, is incomplete and somewhat subjective.⁹⁵⁰ No intelligence has yet been presented, which unequivocally demonstrates that Soleimani posed an imminent threat to the United States at the time of his death. High-ranking intelligence officials, military personnel and even political reporters have all pointed to this issue.⁹⁵¹ Consequently, available information from media reports, archival discoveries and government statements must be used in substitution.

<<https://www.law.cornell.edu/uscode/text/10>>.

⁹⁴⁷ For example, see Lindsey A. O’Rourke, *Covert Regime Change: America’s Secret Cold War*, (Cornell: Cornell University Press, 2018).

⁹⁴⁸ US Code, ‘Title 50: Covert Action Statute,’ *Cornell Law School*, Accessed at: <<https://www.law.cornell.edu/uscode/text/50/3093>>.

⁹⁴⁹ Marc Polymeropoulos, ‘How to Think About the Soleimani Strike in Four Questions,’ *Just Security*, 17 January 2020.

⁹⁵⁰ See Douglas London, ‘The President, His Relationship with Intelligence, and the Soleimani Strike,’ *Just Security*, 15 January 2020; David Lao, ‘Here’s What We Know About the US Intelligence on Soleimani’s Planned Attack,’ *Global News*, 06 January 2020; Zachary Cohen, ‘Skepticism Mounts Over Evidence of ‘Imminent’ Threat That Trump Says Justified The Soleimani Killing,’ *CNN*, 06 January 2020; and Emma Newburger, ‘Defence Secretary Esper ‘Didn’t See’ Specific Evidence of Trump Claim That Iran Planned Embassy Attacks,’ *CNBC News*, 12 January 2020.

⁹⁵¹ Refer to earlier section on ‘Conjecture and Speculation: Intelligence in the Trump Era,’

Comparing and contrasting the criteria of each type of pre-attack self-defence against the available intelligence from the Soleimani strike would allow for a preliminary assessment to be made as to which form of self-defence the US employed (not claimed to have employed) when targeting the Iranian General. The purpose of Soleimani's presence in Iraq will be discussed first.

Soleimani travelled to Iraq on diplomatic business at the request of the Iraqi Prime Minister Abdul-Mahdi, and on behalf of the Iranian government. It has been widely reported and confirmed that Soleimani's purpose for travelling to Iraq was to discuss options to ease tensions between Saudi Arabia and Tehran—an issue which would have also been favourable for the United States.⁹⁵² So this aspect has now been established. It, therefore, further substantiates the fact that Soleimani was targeted in Iraq. It should be noted that Iraq is a sovereign state, whose control over the area in question is accepted by the United States and indeed the international community.⁹⁵³

No outside powers may interfere or infringe on this legal right. Iraq is also a country without any demonstrable involvement in the specific threat that Soleimani supposedly posed. On 31 December 2019, after a funeral was held for the Kata'ib Hezbollah militiamen, dozens of Iraqi Shia militiamen and their supporters marched into the Green Zone and surrounded the U.S. embassy compound.⁹⁵⁴ Despite all of these qualities described above and the knowledge that the Iraqi government specifically banned the US from entering its airspace months earlier,⁹⁵⁵ the CIA still found it necessary to invade sovereign Iraqi airspace to launch missiles from an unmanned

⁹⁵² Kim Sengupta, 'The Reason Qassem Soleimani was in Baghdad Shows How Complex the Iran Crisis Is,' *The Independent*, 06 January 2020.

⁹⁵³ See also C. J. Polychroniou, 'Human Rights, State Sovereignty, and International Law: An Interview with Richard Falk,' *Global Policy Journal*, 11 September 2018; and Samantha Besson, 'Sovereignty, International Law and Democracy,' *European Journal of International Law*, Vol. 22, No.2 (2011), pp. 373–87.

⁹⁵⁴ Tara Law, 'Iraqi Protesters End U.S. Embassy Siege but Tensions Remain High. Here's a Full Timeline', *Time Magazine*, 1 January 2020.

⁹⁵⁵ Meghann Myers, 'US Complies with New Rules as Iraq Cracks Down on Use of Its Airspace,' *Military Times*, 16 August 2019; and Charles Riley, 'The Middle East Has Become a Nightmare for Airlines,' *CNN*, 22 June 2019.

aerial weapon against an active Iranian government official. In any other circumstance, this would be equivalent to an act of war.⁹⁵⁶

Hypothetically speaking, if Russia were to target a senior US government official in Canada—the consequences would be unimaginable. It can be reasonably understood that since this strike occurred in the Middle East, the fallout has been somewhat quelled by a culture of desensitization drawn from decades of political and military campaigns in the region. Regardless of the target, their supposed crimes or unproven involvement in future plots, all nations' sovereignty must be upheld and respected. No country should become a battleground out of opportunity or convenience. Thus, the United States violated this legal constraint of sovereignty in its pursuit of Soleimani in Iraq.

The Trump administration has insisted that the only reason they targeted Soleimani in Iraq was to stop him from planning and executing an imminent terror attack. Regrettably, since no evidence of Soleimani's involvement in any such plot has been presented, this criterion remains unfulfilled. Even now, months following the killing of the Iranian General, no terror plot has materialized. If one were imminent, or at a late stage of planning at the time of Soleimani's death (as the US claims), would the terror group not go ahead with the mission to avenge his death? Since this has not occurred, the American claim that the terror plot was imminent is weakening by the day. More so when considering that the actual US operation that day targeted two key Iranian officials—General Soleimani in Iraq, and Commander Abdulreza Shahlai in Yemen.⁹⁵⁷ One died, the other narrowly survived.

If both men were targeted on the same day, in the same way, it might be assumed that both posed the same level of threat to the United States. Since Shahlai survived, then the threat would most likely still exist, albeit perhaps in a slightly diminished fashion. The alleged plot would continue, and the imminent threat would still exist. But this has not proven to be the case as a terror

⁹⁵⁶ Jessie Yeung, et. al., 'Iran's Top General Soleimani Killed in US Strike,' *CNN*, 04 January 2020; and Julia Wright, 'The Killing of Soleimani is Tantamount to an Act of War,' *The New Yorker*, 03 January 2020.

⁹⁵⁷ Meek et al., 'US Tried to Kill Iranian Commander in Yemen Same Night as Soleimani Strike: Officials.'

attack, even on a smaller scale, has not occurred. Due to an unsubstantiated claim of imminence, as well as nonexistent evidence to demonstrate Soleimani's direct operational or strategic contribution to any terror plot, it can be reasonably assumed that the Trump administration could have waited. They could have perhaps arrested or addressed the threat Soleimani posed differently, as this perceived threat did not constitute a high risk. Equally, the Trump administration might argue that the strike had a secondary, but equally important, deterrent effect.

There is considerable evidence that points to the possibility that the attack on Soleimani was opportunistic.⁹⁵⁸ Several key figures within the Trump administration sought Soleimani for years due to his past involvement with terror organizations. These so-called 'Iran Hawks' will subsequently be identified and discussed in greater detail. In the absence of available intelligence demonstrating Soleimani's involvement in an imminent plot against the United States, Trump's statement that Soleimani's 'horrible past' made him a lawful target suggests that the strike which killed him might have been opportunistic.⁹⁵⁹ Moreover, Soleimani was targeted in an open-air location with relatively few civilians in the area.⁹⁶⁰ His whereabouts were continuously monitored before he arrived at the Iraqi airport via sophisticated satellites and common flight trackers.⁹⁶¹ Furthermore, he was targeted in Iraq, a country where the US considers a comfortable battleground territory since its initial invasion in 2003.⁹⁶²

The political fallout from the Soleimani strike could have been minimized by (i) waiting to target Soleimani while he was in Iran and therefore not involve another party, (ii) arrest/detain Soleimani by use of military/covert force not requiring his execution or the deaths of numerous bystanders, or (iii) refer the matter to the UN Security Council providing all intelligence regarding

⁹⁵⁸ For further discussion on this topic, see Sultan Barakat, 'Trump's Opportunism Could Plunge the Middle East into Turmoil,' *Al Jazeera*, 04 January 2020; and CR Staff, 'Killing Soleimani: A Tactical Lunge with Strategic Consequences,' *Control Risks Group*, 08 January 2020.

⁹⁵⁹ For more on this, please refer to the earlier chapter on 'Imminent Threats and Embassy Plots,'

⁹⁶⁰ Soleimani was targeted at Baghdad airport in the early hours of the morning. Traffic, according to reports, was quite slow and there were limited numbers of staff and travellers in the area.

⁹⁶¹ Iraqi officers interrogated all those who were working at the Baghdad airport at the time Soleimani was killed. They suspected that a cell of spies was communicating with the US, providing intelligence agents with live updates on Soleimani's whereabouts.

⁹⁶² Ariz Kader, 'Iraq: Battleground or Buffer State?' *Barcelona Center for International Affairs*, July 2019: pp. 1-5.

the supposed threat Soleimani posed to garner legitimacy (and perhaps even support) in a plan to stop the plot and detain all those culpable.

From the analysis of available information on the Soleimani strike, the following points have been established. First, no intelligence to demonstrate that Soleimani posed an imminent, nor a sufficient threat, or that he was involved in a terror plot that posed an imminent threat to the United States or international community has been provided or relayed by high-ranking US government officials. Second, there is no evidence to indicate that President Trump's claims of an imminent plot targeting four embassies was ever in active preparation. Third, there were many other potential diplomatic avenues that the US could have relied upon to address the supposed threat Soleimani posed. The most evident of which would have been to refer the matter to the United Nations Security Council.

The US never sought the UN Security Council's authorization, nor did it send intelligence to the Council following the strike to legitimize its decision. Fourth, the threat was perceived as 'serious' by the Trump administration and not by other countries or government officials. Fifth, there is no evidence presented, indicating that the international community's peace was threatened. Trump specified that four US embassies were likely to be targeted, although little intelligence proved this had been provided. Sixth, the weaponry or manner by which the attack would be carried out is still left unanswered. Without unequivocal evidence that the threat was from a threat of WMD or transnational terrorism, not even the preventative form of self-defence can be fulfilled.

These observations challenge the Trump administration's assertions that the Soleimani strike was legitimately executed in accordance with the customary international law of pre-attack self-defence. However, this can only be definitively determined through further analysis.

Chapter 8: Classifying the Soleimani Strike

So far, it has been argued that a state may choose to resort to three types of pre-attack self-defence in response to a perceived threat—namely, anticipatory, preemptive or preventative.⁹⁶³ In the case of the US drone strike on Soleimani, the Trump administration claimed they were left with no choice but to strike first as the Iranian General posed an ‘imminent threat.’ By claiming that the imminence criteria had been fulfilled during their intelligence gathering (despite there being no evidence presented to corroborate this), the US had implied that they acted in anticipatory self-defence—the least contentious of the three.⁹⁶⁴

However, in the absence of any presented information to demonstrate the imminence of the threat Soleimani supposedly posed, this initial assertion is difficult to accept at face value. The purpose of this analysis will be to ascertain which form of pre-attack self-defence the US used, not which form the US has claimed to have used. This end will be achieved by a methodical ‘category’ style approach against which all available information on the strike will be contrasted with the criteria set forth by international law. Two separate analyses will be conducted in this manner. The first will be to determine which type of pre-attack self-defence was used, and the second is to determine if the imminence condition was sufficiently fulfilled before the strike's authorization.

The US has sought to suggest that the drone strike that killed Soleimani was legitimately authorized and per the international law of pre-attack self-defence. However, the administration's statements and reports have been contradictory and unclear about how this conclusion was reached. This section will attempt to address this issue. Alas, we have to accept that international law is not like domestic law and tends to be somewhat contested territory, and so it has been similarly unclear in its description of each type of pre-attack self-defence.

⁹⁶³ Refer to ‘Literature Review’ chapter for elaboration.

⁹⁶⁴ See for example Donald R. Rothwell, ‘Anticipatory Self-Defence in the Age of International Terrorism,’ *University of Queensland Law Journal* Vol.24, No.2 (2005), pp. 24, 337; and Niaz A. Shah, ‘Self-Defence, Anticipatory Self-Defence and Preemption: International Law's Response to Terrorism,’ *Journal of Conflict & Security Law*, Vol. 12, No.1 (2007), pp. 95-126.

For conceptual clarity, each type of pre-attack self-defence has been deconstructed into three descriptive factors, which will be analyzed separately. These include ‘belief,’ ‘nature of the threat,’ and ‘additional requirements.’ The first outlines the main view held by each form of self-defence, the second defines the features that a threat must possess to be considered part of that type, while the last identifies any additional requirements which must be met for the attack to be conclusively ruled as belonging to that particular form of pre-attack self-defence. This three-step verification strategy will be used to determine which type of pre-attack self-defence the US strike used when targeting Soleimani. Thus, an examination of what is already known about the strike must be undertaken.

Method

First, US attitudes towards the practice of pre-attack self-defence will be established. Once these are identified, they will then be used to determine which type of self-defence shares this interpretation or ‘belief.’ Then, information regarding the ‘nature of the threat’ that Soleimani posed will be presented to identify which type of self-defence shares a similar threat analysis. At this point, if both the categories of ‘interpretation’ and ‘nature of threat’ are determined to be aligned with the same type of self-defence, then the final indicator, namely ‘additional requirements,’ will be used to validate this position further. If they differ, then the last category will be used as a tiebreaker or decisive marker. After this analysis is completed, the garnered information will be used to create a table that elucidates how the US strike on Soleimani compares, fulfills, or falls short of the criteria required by each of the three types of pre-attack self-defence.

Belief

Since the 9/11 attacks, the US has held the same, unwavering stance on pre-attack self-defence.⁹⁶⁵ It remains one of only a few states who have argued against the need for council authorization, while also disregarding the customary legal proviso requiring states to consult with the UN

⁹⁶⁵ Mueller et. al., *Attacking in Self-Defence*, pp. 44-45. This can be seen in the post-9/11 reliance on the US National Security Strategy. For further discussion on this topic, please refer to the literature review, subsection ‘The US National Security Strategy,’

Security Council for guidance and authorization on such matters. Instead, it has opted for direct, unchallenged action. The US even defended its resort to pre-attack self-defence, ‘even if uncertainty remain[ed] as to the time and place of the enemy attack.’⁹⁶⁶

Waiting too long to strike may, as the US claims, impair a state’s ability to address threats to their national security effectively—which is reasonably problematic when faced with dangerous threats like terrorism or WMDs.⁹⁶⁷ This interpretive position is closely aligned with that of the ‘Charter is Dead’ school.⁹⁶⁸ These scholars echo the US claim that the UN Charter is outdated and inapplicable to current threats. For this reason, the US believes that pre-attack self-defence should be used against any perceived threats without regard for authorization from the UN Security Council. In their view, this legislative body is no different from the UN Charter, as both operate under the same outdated rules.

The findings in this section are most aligned with the ‘belief’ criteria associated with preventative self-defence. This particular form of self-defence is founded on three fundamental principles. The first contends that states need not suffer an attack before being allowed to respond in self-defence. The second asserts that non-intervention could be riskier than illegitimate preventative attacks. While the third espouses the belief, which is also shared by proponents of the ‘Charter is Dead’ school of thought, that the Charter is inapplicable to modern threats of terrorism and the like, making legal parameters rigidity inapplicable.⁹⁶⁹ This position also suggests that seeking counsel from the UN Security Council is also ineffective and unnecessary as it operates based upon the legislation criticized above.

⁹⁶⁶ National Security Council, ‘The National Security Strategy of the United States of America,’ p. 15; see also House of Lords, ‘UK Attorney General’s Speech,’ *HL Debate*, 21 April 2004, vol.660 cols 369-372 (according to the House of Lords, self-defence may be acceptable as a state response against terrorist groups who are understood to pose an imminent threat by carrying out multiple attacks in a short period of time, even if there is insufficient evidence available about the date/time of the potential next attack).

⁹⁶⁷ Deeks, ‘Taming the Doctrine of Pre-Emption,’ p. 668.

⁹⁶⁸ Refer to earlier discussion on ‘Schools of Thought.’

⁹⁶⁹ See Murphy, ‘The Doctrine of Preemptive Self-Defence,’ pp. 717-719.

If the US had not shared this pejorative view of the Charter, then the remaining findings could have been categorized as preemptive. It would not have qualified under the anticipatory type as the US has demonstrated its favour for offensive positions in military operations. This section demonstrates that the first criteria, namely ‘belief,’ fulfilled by the US view towards the policy of pre-attack self-defence, is best aligned with preventative self-defence.

Nature of the Threat

The US has claimed that General Soleimani posed an ‘imminent threat’ to US personnel and interests in the region. Furthermore, the Trump administration has argued that it legitimately operated in adherence to the customary legal right of pre-attack self-defence to prevent the threat described above from materializing. Using available information, government statements, and open-source intelligence, this portion of the analysis will attempt to establish what sort of threat Soleimani posed at the time of his death.

The following five criteria must be fulfilled to be categorized under the most favourable type of the three, namely anticipatory self-defence.⁹⁷⁰ The first is discernible proof that a threat exists. Owing to a lack of available intelligence, partly due to the Trump administration’s unwillingness to divulge pertinent information on the strike, this criterion cannot be proven. Although Trump claimed that Soleimani was involved in a plan to target US embassies in the region, this has not been proven. Government statements, without concrete evidence to corroborate such assertions, are insufficient to fulfil this condition. Undermined by the fact that US embassy officials in several countries in the Middle East have all confirmed that they were unaware of any threat.⁹⁷¹ Additionally, if such a threat existed, as the US claims, would not Soleimani’s death incite the supposed attacks to be launched sooner?

⁹⁷⁰ For greater discussion on this, refer to Murphy, ‘The Doctrine of Preemptive Self-Defence,’ pp. 699-748.

⁹⁷¹ See Atwood, ‘State Department Security Officials Weren’t Notified of Imminent Threats to U.S. Embassies.’

With the failed assassination attempt on Shahlai in Yemen, it is reasonable to assume that the threat would still exist as long as he is still alive.⁹⁷² And if this is the case, then the alleged threat not only persists but might be extrapolated by the martyring of Soleimani and the failed assassination attempt on his own life.⁹⁷³ To complicate matters further, it could be that if a threat did not exist before the strike on Soleimani and Shahlai, it would undoubtedly be precipitated by the US' aggressive military actions. Of course, we must accept that this chain of argument does involve a rapidly increasing range of variables of the sort that are commonly associated with any counter-factual argument.⁹⁷⁴ Given the available information, this criterion was not fulfilled. There has yet to be any proof that Soleimani posed an existing and active threat at the time of his death. Rather than conclude the analysis here, as this sufficiently demonstrates that the US strike cannot be classified as anticipatory, the following four criteria will also be examined to demonstrate incompatibility furthermore.

The matter of imminence was perhaps the most referenced element following the Soleimani strike. Thus, imminence becomes the second criterion required to prove that an operation fulfilled the necessary factor to be considered anticipatory. Unfortunately, this was the most referenced because it was also the most disputed. The Trump administration claimed that the threat posed by Soleimani was imminent but stopped short of providing any intelligence which demonstrated this. When forced to provide an intelligence briefing to Congress, including the 'Gang of Eight,' the Trump administration was criticized profusely. Congresspeople characterized the quality of intelligence presented as 'weak' and 'sophomoric.'⁹⁷⁵ While others, including Adam

⁹⁷² For clarity, refer to the earlier section on 'The Inconvenient Truth: Evidence of a Larger Op'

⁹⁷³ See Jesse Paul Lehrke and Rahel Schomaker, 'Kill, Capture, or Defend? The Effectiveness of Specific and General Counterterrorism Tactics Against the Global Threats of the Post-9/11 Era,' *Journal of Security Studies*, Vol. 25, No.4 (2016), pp. 729-762; Joseph K. Young, 'Morality, Efficacy, and Targeted Assassination as a Policy Tool,' *Journal of Criminology & Public Policy* Vol.16 (2017), p. 225; and Jack McDonald, 'Decapitation, Repression, or Cauterization? The Problem of Targeted Killings,' in the *Handbook of Terrorism and Counter Terrorism Post 9/11*, (London: Edward Elgar Publishing, 2019).

⁹⁷⁴ Richard Ned Lebow, 'What's So Different About a Counterfactual?' *World Politics* Vol.52, No.4 (2000), pp. 550-585.

⁹⁷⁵ Transcript, 'Representative Connolly Reaction to Iran Briefing.'

Schiff, described the Trump administration's account as 'just plain wrong,' in other words, of fudging the intelligence, and exaggerating the facts to fit the narrative.⁹⁷⁶

The US Constitution affords Congress, particularly those in the 'Gang of Eight,' the authorization necessary to view the same intelligence available to the president. Expectedly, this brief also included classified intelligence to which the general public does not have access. Even so, a noteworthy number of those who were given the brief were left unimpressed and unconvinced that Soleimani posed a significant threat, much less an imminent one worthy of immediate execution. It is also worth emphasizing that Trump signed the authorization to kill Soleimani seven months before the strike that eventually killed him. If Soleimani posed an imminent threat, he would have been killed much sooner. It would not have been difficult to find him, as he was not hiding like most other targets and terrorists that the US has hunted over the years.⁹⁷⁷ By virtue of being an Iranian government official regularly involved in international interactions, Soleimani did not have the ability, nor the inclination, to hide. He had to attend public meetings, go on diplomatic missions, and even hold press conferences. Finding Soleimani was not the problem—finding a justification to kill him, on the other hand, undoubtedly took much longer.

Furthermore, if the threat Soleimani posed were an imminent one, then the US would have been eager to vindicate their actions by providing all necessary intelligence to the press and the UN Security Council. Since the intelligence on Soleimani was no longer necessary, as the mission objective was achieved and Soleimani was killed, this could have easily been offered—even if only to the Security Council. Yet, there has been no convincing intelligence presented to the press or US government officials. Instead, the UN did receive a letter within which the US claimed that it acted legitimately, in accordance with the international law of pre-attack self-defence, to address the imminent threat posed by Soleimani. Claiming adherence, however, is not the same as demonstrating it.

⁹⁷⁶ Transcript, 'Rep. Adam Schiff on Face the Nation,' *CBS News*, 12 January 2020.

⁹⁷⁷ Schmitt et al., 'For Trump, a Risky Decision on Suleimani is One Other Presidents Had Avoided.'

The third criterion addresses the degree of active participation that Soleimani played in the alleged ‘four embassy plots.’ Both government and embassy officials have questioned whether this even existed.⁹⁷⁸ Apart from US government claims, no objective information has been presented to corroborate this assertion. The fourth and fifth criteria, precisely the unavoidable and high-risk nature of the threat, similarly remain unproven.

Could the strike on Soleimani have been avoided by referring the matter to the UN Security Council or the ICJ? Soleimani’s position as an Iranian government official gave these international legal bodies the ability to put him on trial. Additionally, the requirement that a threat must be demonstrably high-risk, which renders waiting unrealistic, is similarly unproven. If this were the case, Soleimani would probably have launched an attack within the seven months that it took the Trump administration to plan and execute the strike. Consequently, the Soleimani strike does not adhere to the criteria presented under the category of anticipatory self-defence. Compared to the preemptive category, it also falls short as the threat cannot be proven, as concluded in the discussion above. Once again, this requires an evaluation of the preventative type of self-defence. According to this classification, threats must not only be perceived as serious, but they must also constitute a danger to national or international security.

Despite the subjectivity of this requirement, the Trump administration fails to demonstrate this fully. Government statements alone, regardless of whether they are supported by evidence, are insufficient to demonstrate a ‘perceived threat.’ To perceive the seriousness of a threat, one must infer this from some form of information or intelligence. Still, no such intelligence has been introduced. Thus, the nature of the threat Soleimani posed cannot objectively fulfil the requirements of any type of pre-attack self-defence, not even preventative. This analysis now proceeds to the consideration of ‘additional requirements.’

⁹⁷⁸ Atwood, ‘State Department Security Officials Weren’t Notified of Imminent Threats to U.S. Embassies.’

Additional Requirements

Thus far, ‘belief’ has been the only element to have sufficiently aligned with the preventative type of self-defence. The ‘nature of the threat’ failed to adhere to any form of pre-attack self-defence. When compared to the preventative form, it fulfilled the criteria of being ‘perceived’ as a threat, but since no intelligence was available to gauge how this conclusion was reached, this also subsequently failed to meet the criteria. As such, the Soleimani strike's available information failed to demonstrate that the ‘nature of the threat’ posed by the General aligned with any of the three types of pre-attack self-defence. The following subsection examines the additional conditions required by each type of pre-attack self-defence to establish whether the Soleimani strike fits within one of these three classifications.

Both anticipatory and preemptive self-defence require that an attack not be executed solely for opportunistic reasons. Furthermore, both necessitate intelligence to be unambiguous, superior, and convincing. Objective parties who read this intelligence should be convinced of any operations' legitimacy and lawfulness resulting from it. Unfortunately, due to the lack of quality intelligence on the Soleimani strike, the US operation cannot be viewed as adhering to these two types of self-defence. Evidence may also point to the fact that the US strike on Soleimani may have been opportunistic—thereby infracting both conditions. He was targeted in a location that was open air at a time with relatively few civilians in the area.

Additionally, his whereabouts were closely monitored before he arrived at the Baghdad airport. The target location was also a familiar one since the US has had an active presence in Iraq since the early 2000s. Lastly, key figures within the Trump administration had self-admittedly been ‘out to get’ Soleimani for years due to his past involvement with terror organizations. In addition to Trump’s assertion that Soleimani’s ‘horrible past’ made him a legitimate target, this finding suggests that the strike which killed him might have been opportunistic.

Two forms of pre-attack self-defence have thus been ruled inapplicable to the Soleimani strike. Thus, preventative self-defence remains the only one left to consider. However, this type of pre-attack self-defence requires one additional condition. Simply put, states must seek

authorization from the UN Security Council if they wish their preemptive strike operations to be viewed as legitimate. Without this, operations are viewed as controversial. As discussed earlier, the US did not, and at the time of writing, has not sought authorization from the UN Security Council for their strike on Soleimani or Shahlaei.

Once more, this demonstrates an incompatibility between US claims and their observable actions. The US has alleged that it had legitimately and lawfully adhered to pre-attack self-defence parameters as stipulated in international law. However, available information and intelligence on the Soleimani strike paint a different picture. Although US ‘belief’ is aligned with the most contentious form of preventative self-defence, it subsequently fails to further align to this type when considering the ‘nature of the threat’ and ‘additional requirements.’ It failed to align with any pre-attack self-defence criteria. With support from pertinent literature, international laws and available intelligence, the following table was created to supplement the above analysis with the hope of achieving greater comprehension and clarity.

Type of Self-Defence	Description
Anticipatory	<ul style="list-style-type: none"> ▪ Belief: <ul style="list-style-type: none"> ✗ States should not suffer an attack before being allowed to act in self-defense ▪ Threat must: <ul style="list-style-type: none"> ⊘ Exist ⊘ Imminent ⊘ Show a degree of active preparation ⊘ Unavoidable ⊘ Pose a high risk (which renders waiting unrealistic) ▪ Additional requirements: <ul style="list-style-type: none"> ✗ Attack cannot be opportunistic ✗ Intelligence must be superior and unambiguous to convince any objective party that actions were legitimately undertaken, and therefore lawful
Pre-emptive	<ul style="list-style-type: none"> ▪ Belief: <ul style="list-style-type: none"> ✗ Striking first is better than being attacked. ✗ Still lawful if attack is taken during the 'last window of opportunity'. This relies on the ability to determine the imminence of an attack. ✗ Pre-emptive self-defense is more effective than waiting to be attacked, as offensive position is retained. ✗ Consequences of waiting to be attacked can be devastating—i.e. WMDs. ▪ Threat must: <ul style="list-style-type: none"> ✗ Be at least 'sufficient', if not imminent. 'Sufficient' criteria as developed by Michael Walzner. ✗ U.S. views this form of self-defense as lawful even if uncertainty remains regarding time or location of attack. ▪ Additional requirements: <ul style="list-style-type: none"> ✗ Raises questions about what types of intelligence, and what level of confidence
Preventative	<ul style="list-style-type: none"> ▪ Belief: <ul style="list-style-type: none"> ✓ States should not suffer an attack before being allowed to act in self-defense. ✓ 'Charter is Dead' school of thought—proponents believe that the U.N. Charter is inapplicable to current threats like transnational terrorism and WMDs. ✓ Non-intervention is riskier/worse than preventative attack. ▪ Threat must: <ul style="list-style-type: none"> ⊘ Be perceived as serious ⊘ Threaten the peace of the international community ▪ Additional requirements: <ul style="list-style-type: none"> ✗ In the case of WMDs, the window of opportunity may be subjective and murky, so the U.S. government has argued that missing this key window of opportunity could be problematic if the threat is significant—like that of a WMD. ✗ This form of self-defense can be lawful if the U.N. Security council authorizes it for the purpose of self-defense. Controversial only if this authorization is not sought nor given.

Figure 2: Three Types of Pre-Attack Self-Defence

✓	CONDITION FULFILLED
✗	CONDITION UNFULFILLED
⊘	INSUFFICIENT INTELLIGENCE TO REACH A CONCLUSION

Imminence Criteria—Fulfilled?

Of course, identifying the type of pre-attack self-defence the US relied upon in the Soleimani affair does not matter if imminence cannot be proven. If a state must engage in self-defence, as allowed under the conditions of Article 51 of the UN Charter, then the condition of imminence must be sufficiently fulfilled. To establish imminence, however, two subsequent conditions must be satisfied, namely necessity and proportionality.

Derived from just war theory, as discussed earlier in chapter three, these two conditions are fundamental to legitimizing any claim of self-defence, not only anticipatory action. The necessity of the strike on Soleimani, and its alleged proportionality to the threat Soleimani supposedly posed, will be integrated into the analysis undertaken in this section. The following table comprises a set of indicators that were inspired by and derived from selected works of Michael L. Walzer, Abraham D. Sofaer and Michael W. Doyle. The purpose of this is to provide a methodical way of correlating the circumstances of the Soleimani strike with the legal parameters of pre-attack self-defence, as identified by the abovementioned scholars.

This table also includes an additional factor that scholars have suggested future research should include when evaluating the legitimacy of military operations justified as pre-attack self-defence. This factor is included in the last row, entitled, ‘Degree of Intelligence Disclosures,’ as a fifth criterion from which to analyze the Soleimani case study. These findings will then be used to ascertain whether the Soleimani strike sufficiently adhered to the pre-attack self-defence criteria set forth by international law.

Criteria	Soleimani Case Study
Nature and Severity of Threat Posed.	<ul style="list-style-type: none"> i. Soleimani posed a strategic, but not an operational threat ii. If Soleimani was eliminated, the terror plot he was developing (if such even existed), would not be disrupted due to the organizational structure of most known terror organizations being networked rather than hierarchical—operating under guerrilla-style tactics and conditions. iii. Threat of setting a dangerous precedent to target and execute a foreign government official without trial or evidence presented to demonstrate culpability and a need for immediate action
Potential Destruction Threat Could Cause.	<ul style="list-style-type: none"> i. U.S. President Donald Trump publicly declared that Soleimani was part of a larger terror plot which sought to target four American embassies abroad. However, no evidence to substantiate such a claim has been presented. Neither the intelligence briefings with the highest level of American congresspeople, nor to the general media was given any evidence to support this assertion. ii. The U.S. did not fully consider the fallout from this targeted strike. Some scholars believe that the termination of the Iran Deal escalated tensions between the Iranian regime and the Trump administration. The decision to take out Soleimani in a third-party state only exacerbated this condition and led to a series of events which may have been worse than leaving Soleimani alone. Iran launched missiles targeting American military bases in Iraq, a Ukrainian passenger jet was shot down, political tensions lead to protests and demonstrations on the streets of Iran, growing tensions and uncertainty between the U.S. and Iran increase this potential for a new war, perhaps even nuclear in nature. The question remains what potential destruction could Soleimani have caused? There has yet to be any evidence presented to substantiate the claim that embassies were being targeted as part of a complex terror plot—one which not even American intelligence agencies were aware of. What is certain is that 176 died onboard the Ukrainian plane, many others during the protests in Tehran, a few bystanders during the strike on Soleimani and countless others suffered life-altering injuries when their military bases were struck by Iranian missiles in Iraq. Was the plot Soleimani was planning worse than what transpired as a result of his targeted killing? If so, wouldn't the United States be more than willing to present this evidence to vindicate their actions. Why keep all intelligence a secret unless the fallout was worse than anticipated—worse than any potential plot they could have thwarted (if such existed)? In this case, without any intelligence presented by the Trump administration to prove otherwise, the destruction caused by the fallout of the targeted killing of Soleimani far outweighed any and all destruction that a supposed plot could cause.
Urgency of the Threat. Probability of Threat Materializing. Risk in Waiting.	<ul style="list-style-type: none"> i. Once more, the lack of available intelligence presented to officials and the public fails to demonstrate that Soleimani proved to be an urgent threat. In fact, the Iranian General travelled to Iraq on official state business to discuss administrative and diplomatic matters with Iraqi officials. If Soleimani was in Iraq on state business, then the threat he posed was not urgent—not as imminent as the Trump administration has argued. ii. The weapon used to target Soleimani, namely a lethal military drone, was probably not the best medium to use. Drones are remote, so they don't fit well into the claim of self-defense when the only party at risk is the one being targeted. Additionally, it is not proportional to the threat that Soleimani posed at that moment. Perhaps other avenues could have been used. A military convoy in Iraq could have intercepted Soleimani, arrested him and sent him to the ICJ for trial. Killing him on the spot by remote control killer drone does not fit well into the narrative that the U.S. was a victim of his. Lastly, the drone is not the best at making a distinction between target and non-target. As a result many other bystanders died alongside Soleimani when the drone fired its missile.
Alternatives Exhausted?	<ul style="list-style-type: none"> i. This matter was not referred to the U.N. Security Council prior to the strike or afterwards. No intelligence has been brought forth to support the U.S. claim that Soleimani posed an immediate threat worthy of immediate action and execution. Other than his past as a 'terrorist', as the U.S. has identified him, there remains no evidence to demonstrate that (i) Soleimani was part of an imminent terror plot, (ii) the plot targeted the United States, (iii) critical to the plot and therefore worthy of elimination to thwart aforesaid plot, and (iv) all other potential alternatives including diplomatic means would be insufficient and/or inapplicable to the nature of the threat. ii. The U.S. did not ask Iraq for permission to enter their airspace with a lethal drone to carry out this targeted killing. Entering the airspace of a third-party sovereign state and launching an attack on its territory is akin to an act of war. This has been treated nonchalantly by the Trump administration, even though Iraq specifically requested that all operations cease within its sovereign borders' months prior to this attack. iii. The Trump administration did not follow domestic protocol requiring that high ranking intelligence officials be notified of the plan to target Soleimani, many finding out after the fact via media reporting. Domestically, the U.S. did not follow protocol. Internationally, the U.S. did not follow protocol. Instead preferring immediate action over careful planning and adherence to pre-established norms/laws. This implies that the U.S. traded alternative action for rapid response.
Degree of Intelligence Disclosures.	<ul style="list-style-type: none"> i. Overall, the U.S. has opted for low levels of intelligence disclosure surrounding the targeted killing of Gen. Soleimani. Instead, it has operated on the assumption that all claims made by the administration would be taken at face value, without challenge or question. The Trump administration made no mention of an additional plot targeting another Iranian government official in Yemen that occurred on the same day as the strike against Soleimani, but which was ultimately unsuccessful. What role did this play? What intelligence precipitated such a response? Was there a larger operation underway beyond Soleimani? If the second Iranian government official survived, does that mean the threat is still active? These are all questions left unanswered and unaddressed by the Trump administration. ii. Additionally, even high-ranking intelligence officials would learn of new information or claims from media reporting what President Trump or his cronies would say that day. Some of these officials belonged to the 'gang of eight' which is a group of eight congresspeople who hold such a high level in the American government, that they would be privy to any and all intelligence that the Trump administration was offered prior to making the decision to strike Soleimani. The fact that this intelligence was not offered to this high-ranking group implies one of three possibilities. One, no such intelligence exists, and President Trump carried out the strike based on historical information regarding the threat Soleimani posed in the past as a terrorist financier, and therefore had no proof of any potential plot or new threat the General might pose. Two, the intelligence they had was minimal and therefore exaggerated as a means of allowing the strike to continue since Soleimani would be in a convenient location for a strike to occur. Or three, the intelligence was faulty, and the Trump administration is concerned with the potential political and legal ramifications which might ensue if this fact was released, and so they have chosen to keep any incriminating intelligence secret, even from government officials who have the legal right and necessary clearance to see such information. This would imply that the Trump administration deliberately and methodically restricted intelligence disclosure even from those entitled to such information. iii. Compounding this contentious move, is the fact that the Trump administration decided to engage in the contentious practice of pre-emptive self-defense with an even more contentious weapon—a lethal military drone. As a result, this case is three times more controversial, not to mention significantly less transparent.

Figure 3: Theoretical Framework - Examining the Imminence Criteria of the Soleimani Strike

Legitimacy Formula

A legitimacy ‘formula’ was also developed to bolster the findings and analysis of the preceding sections. The following table comprises six elements that must be sufficiently demonstrated before the question of legitimacy can be answered. These elements include intent, plan, strategy, weapon, government response and public reaction. Any military operation, specifically those undertaken under the guise of counter-terrorism, derives its legitimacy from the six elements mentioned earlier. Was the intent behind the operation justifiable? Did the weapon used in the strike demonstrate evidence of proportionality and applicability? What was the public response to this operation? These are just a few such questions that must be considered before legitimacy can be conferred.

The legitimacy formula developed for this dissertation will be presented in table format. This format was chosen for two reasons. The first is clarity, as all six elements can be observed simultaneously, allowing for cross-examination, if necessary. The second is consistency. The other figures used in this section are also presented in this same format, which provides an added level of coherence, making it easier to compare and contrast the variables between and among all presented tables.

INTENT	PLAN	STRATEGY	WEAPON	GOV'T RESPONSE	PUBLIC REACTION
<p>EVIDENCE DEMONSTRATING TRUMP AUTHORIZED THE SOLEIMANI STRIKE 7 MONTHS PRIOR TO THE JANUARY 2020 OPERATION THAT ULTIMATELY KILLED THE IRANIAN GENERAL</p> <p>A NUMBER OF TRUMP ADMINISTRATION OFFICIALS HAVE BEEN 'OUT TO GET' SOLEIMANI FOR YEARS—AND HAVE APTLY BEEN CALLED 'IRAN HAWKS' BY THEIR COLLEAGUES</p>	<ul style="list-style-type: none"> • NO ADHERENCE TO PRE-ATTACK SELF-DEFENCE REQUIREMENTS • NO DEMONSTRABLE ADHERENCE TO IMMINENCE CRITERIA • THE U.S. DID NOT INFORM, NOR SEEK GUIDANCE OR APPROVAL FROM, THE U.N. SECURITY COUNCIL PRIOR TO THE STRIKE ON SOLEIMANI • NO TRANSPARENCY DOMESTICALLY ON THE LETHAL OPERATION—EVEN OFFICIALS WITH CLEARANCE FOR THE INTELLIGENCE WERE NOT PROVIDED WITH SUCH (INCLUDING THE 'GANG OF EIGHT') 	<ul style="list-style-type: none"> • RESULTED IN THE VIOLATION OF SOVEREIGNTY OF AN UNINVOLVED THIRD-PARTY STATE (IRAQ) • CONTROVERSIAL KILLING OF A FOREIGN STATE OFFICIAL WITHOUT TRIAL • UNREPORTED AND UNEXPLAINED REASON FOR SEPARATE YEMEN OPERATION THAT WAS UNSUCCESSFULLY EXECUTED ON THE SAME DAY AS THE SOLEIMANI STRIKE • PRACTICE OF TARGETED KILLING IS CONTROVERSIAL AND TANTAMOUNT TO AN ACT OF WAR WHEN USED AGAINST A FOREIGN GOVERNMENT OFFICIAL 	<ul style="list-style-type: none"> • THE USE OF A REMOTE LETHAL WEAPON, A DRONE, IS ALSO CONTENTIOUS • THE USE OF A DRONE IN THE PRE-ATTACK SELF-DEFENCE OPERATION DOES NOT FIT THE NARRATIVE DUE TO THE UNIDIRECTIONAL RISK ASSOCIATED WITH ITS USE • WEAPON WAS NOT ACCURATE BECAUSE THERE WERE COLLATERAL DEATHS • THE COVERT NATURE OF THE OPERATION AND THE WEAPON (WHICH IS A BENEFIT) WAS TRADED FOR PUBLICITY WHICH RESULTED IN A NUMBER OF CONSEQUENCES 	<ul style="list-style-type: none"> • MISINFORMATION AND SHIFTING GOVERNMENT STATEMENTS ON THE STRIKE • WEAK INTELLIGENCE BRIEFINGS AND CONTINUED SECRECY • UNSUBSTANTIATED CLAIMS OF U.S. EMBASSIES BEING THREATENED OR TARGETED BY SOLEIMANI, OR A RELATED THREAT • TRUMP COMPARED HIS KILL OF SOLEIMANI TO OBAMA'S OSAMA BIN LADEN OPERATION IN AN ATTEMPT TO GAIN POLITICAL SUPPORT—WHICH IS NOT THE PURPOSE OF ANY SUCH OPERATION. THE GOAL SHOULD BE TO ELIMINATE A THREAT, NOT IMPROVE ONE'S POLITICAL STANDING 	<ul style="list-style-type: none"> • CRITICAL COMPONENT IS PUBLIC PERCEPTION AND REACTION • AN OBJECTIVE PARTY IS THE MEDIA (WHEN ALL REPORTS FROM VARIOUS SOURCES ARE COMPILED TO FORM A GENERAL UNDERSTANDING OF THE EVENT) • SOLEIMANI STRIKE RESULTED IN PUBLIC PROTEST, OUTCRY IN PUBLIC PROTEST, OUTCRY • IRAN ANALYSTS WARNED OF POTENTIAL ESCALATION IN TENSIONS, HINTING AT A THREAT OF WWII • IMMEDIATE POLITICAL FALLOUT AND RISE IN TENSIONS RESULTED IN THE DOWNING OF A UKRAINIAN PASSENGER JET • TOXIC RELATIONSHIP BETWEEN THE TRUMP ADMINISTRATION AND THE MEDIA—CALLING THEM 'FAKE NEWS' • A GROWING NUMBER OF COUNTRIES AND THEIR ELECTED OFFICIALS DENOUNCED THE U.S. STRIKE ON SOLEIMANI

Figure 4: Legitimacy Formula

Even if 'intent' is only weakly established in place of definite intelligence, the remaining five categories provide sufficient information to reach a confident conclusion. Thus, when all six categories are combined and considered, the legitimacy formula developed in this dissertation demonstrates that the strike on Soleimani cannot be ruled not legitimate nor effective or legal at face value. Should more intelligence on the Soleimani strike be released, this evaluation may change. However, currently, and with all available information and intelligence being considered, the legitimacy formula's result is quite clear.

Takeaway

There are notable exclusions and weaknesses in the Trump administration's intelligence regarding the strike that killed Soleimani. These have been identified by several individuals, from high-ranking intelligence officials to military personnel and political reporters. In the absence of complete information, available intelligence, findings, and government statements were used in substitution. Despite these gaps, the available information pointed out that the US strike on Soleimani did not fulfill the basic criteria of preventative self-defence.

Likewise, the condition of imminence is also left unproven. The underlying conditions for this, namely proportionality and necessity, are left unfounded. The strike on Soleimani cannot be deemed as necessary unless there is sufficient intelligence presented to suggest that he posed a threat that could not be addressed by any other means than a lethal drone strike. Subsequently, the element of proportionality cannot be definitively proven if the severity of the threat in question is unknown. For pre-attack self-defence to be deemed legitimate, the response undertaken to address the threat must be on par with the impending threat or attack's nature and severity.⁹⁷⁹ Since both necessity and proportionality cannot be inferred from the above categories, then the imminence of the threat Soleimani posed is therefore left unanswered. Moreover, further attempts to block investigations into the strike, deny access to intelligence, and engage in a series of government officials' shifting statements only further delegitimize the strike.

⁹⁷⁹ Lubell, *The Problem of Imminence in an Uncertain World*, p. 9.

Under the guise of anticipatory self-defence, the US executed a foreign government official with the goal, as some reports suggest, to incite regime change within Iran. Furthermore, this position is supported and corroborated by intelligence officials' statements, who first confirmed that another Iranian official was targeted as part of the Soleimani operation. This second drone strike was later identified as a failed assassination attempt on Shahlai in Yemen. Through the comprehensive examination and analysis undertaken in this chapter, one significant conclusion is reached: in a best-case scenario, the US only partially fulfilled the criteria of preventative self-defence.

However, this dissertation contends that this form of pre-attack self-defence should only be referred to as 'preventative' when the threat is greater than that posed by a singular individual. If the target is only one person, as in Soleimani and Shahlai's case, this should instead be referred to as execution or assassination (if the individual in question holds a significant office or position). Targeted killing is a deceiving label that refers to the same practice but carried out by a different means, namely an unmanned aerial vehicle. Execution or assassination by drone, precisely what the Soleimani strike was, should therefore be referred to in this way. Perhaps if this proper label were used instead of 'targeted killing,' states would be more hesitant to resort to this strategy as the negative connotations associated with the term might deter its use.

The US has tried to bolster a weak claim of imminence with adamant statements and reassurances. At this moment in time, with all available literature, scholarly contributions, information and intelligence having been considered, it can be reasonably understood that the United States government did not sufficiently fulfil the imminence criteria. The inability to do so means that the claim to legal legitimacy afforded by adherence to the legal parameters of pre-attack self-defence under Article 51 of the UN Charter cannot be corroborated. This conclusion has been supported by the fact that there has been insufficient information presented to demonstrate that the strike that killed the Iranian General thwarted an imminent threat or significantly impaired the terror organization's capabilities and functions in question.

Some scholars have argued that the fallout from this strike had an adverse effect. Increasing political tensions, resulting in violent military operations and significant collateral damage, contributed to this ‘fallout.’ Should circumstances change in the future, by the introduction of new information and intelligence to prove the Trump administration's unwavering stance, then a reassessment might be necessary. In this dissertation, however, conclusions drawn herein are achieved by analyzing available intelligence and information—rather than conjecture and suppositions.

The purpose of this chapter was to determine which form of pre-attack self-defence the US employed when targeting Soleimani. A history of the US counterterror plan, its drone program, and similar assassination attempts were all examined to achieve this. In doing so, insight into the US’ historical (ab)use of pre-attack self-defence strategy was garnered from past practices and policies. Although it is already known that the targeted killing of Soleimani suffered from a complex of circumstances, three additional deductions have been furthermore brought to light. The first refers to the means used to kill Soleimani. Using a drone was most likely an error in judgement for the US intelligence agency. The weapon itself is highly contentious, so employing it in a similarly controversial strategy was unwise. Not to mention that the operation later claimed to be in ‘self-defence’ when the risks associated with drones are predominantly unilateral. Self-defence denotes that the victim state is faced with an unproportionate amount of risk, forcing action to preserve its survival and security. By employing an unmanned drone to kill Soleimani, the legitimacy of the US’ claim to such a strategy is forfeited, as Soleimani could not have possibly posed a more significant threat than the lethal drone assigned to kill him.

Second, the timing of the strike was also problematic. The US could have waited to kill Soleimani when he returned to Iran. Striking him in Iraq forced the involvement of a third-party state into an already tense two-party conflict. Moreover, Iraqi sovereignty was violated by the operation, which furthermore delegitimizes the US counterterror programme in the eyes of the international legal community. Publicly announcing the strike is another issue. The fallout that ensued following the Soleimani strike could have been avoided if the operation and the CIA’s involvement were kept covert. Following the assassination of Mughniyeh, the operation and its outcome were kept secret. No public statements or admissions to participating in a joint op was

ever given. This choice to keep US involvement covert could have been repeated in the case of Soleimani. Publicly announcing the strike gave way to criticism, challenges and a rise in tensions between the two states. If the US provided adequate intelligence to demonstrate the threat Soleimani posed or had consulted with the UN Security Council before engaging in the operation, the outcome could have differed. In the absence of such considerations, the strike's legitimacy is, therefore, difficult to ascertain.

Yet another challenge to the US narrative, and one directly related to the issue of timing, has been the unreported failed assassination attempt of Shahlai in Yemen, who was targeted on the same day, and in the same way, as Soleimani. If Soleimani posed an imminent threat that resulted in his immediate elimination, then it stands to reason that Shahlai must have posed the same level of threat—if both men were targeted simultaneously during the same operation. The last consideration regarding timing is drawn from the conflicting statements from the Trump administration. The US claimed that Soleimani posed an imminent threat, which prompted an immediate response to eliminate him. However, Trump authorized his execution at least seven months before Soleimani was eventually killed. This discovery contradicts the imminence claim and raises the question of whether the January strike was opportunistically undertaken.

The third issue is one of status. The US did not just kill a man. They killed an Iranian General who was also actively serving in a senior high-ranking official government role. Despite attempts to downplay his political role and accentuate his past involvement with terror groups and proxies, the US erred in this respect as well. By covertly executing an active government official, the CIA's actions were tantamount to a war declaration. This story would have had a much different ending, should the tables have been turned.

Although pre-attack self-defence is a strategy afforded to states under international law, its relatively opaque nature requires states to independently assume responsibility for their risk assessment. Legitimizing the use of this strategy requires careful consideration to be paid, among other factors, to the suitability of the target, the choice of location and the potential of non-violent avenues for deterring the threat. Wherever possible, states should consider communicating their

concerns and intentions to an international organization capable of imparting guidance and support, like the UN Security Council.

In cases where pre-attack self-defence is illegitimately or illegally used, states are responsible for rectifying the issue. Otherwise, the use of such a strategy might have unintended adverse effects, like those the US sustained following the strike on Soleimani. In the end, Soleimani's death has had a minimal impact on the terror organization but a maximum impact on the perceived legitimacy of the US' drone counterterrorism program.

Intelligence agencies have long relied on the strategy of leadership decapitation. Although the origins of this practice date back to antiquity, it has seen a resurgence during eras of non-state social, political and religious movements—becoming ever more prevalent in the last half of the twentieth century.⁹⁸⁰ Dr Bryan C. Price, Lt. Col. (ret.) of the US Army and former Assistant Professor of Social Sciences at the US Military Academy, has defined this as a counterterrorism strategy wherein the head of a terror group is captured, killed, or captured and eventually killed.⁹⁸¹ This tactic has been used in the belief that eliminating key players would subsequently weaken or destroy the group in question.⁹⁸² During the Obama administration, it was increasingly referred to as the ‘counter-terrorism approach’ and was often contrasted with the ‘counter-insurgency approach,’ the latter being associated with hearts and minds, nation-building and other ambitious social projects.⁹⁸³

The interest in decapitation grew during the late 1990s to the early 2000s. This partly reflected an awareness of the difficulty of implementing alternative approaches. At the time, scholars like Richard J. Chasdi published findings that demonstrated how a terrorist group's longevity was intrinsically based on their leadership strength.⁹⁸⁴ Due to these reports, intelligence agencies began to rely heavily on this strategy following the 9/11 attacks.⁹⁸⁵

⁹⁸⁰ See Jenna Jordan, *Leadership Decapitation: Strategic Targeting of Terrorist Organizations* (Stanford: Stanford University Press, 2019).

⁹⁸¹ Bryan C. Price, ‘Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,’ *Journal of International Security*, Vol. 4. No. 36 (2012), pp. 9-46.

⁹⁸² Kenneth Yeo Yaoren, ‘Leadership Decapitation and the Impact on Terrorist Groups,’ from *Counter-Terrorist Trends and Analyses*, Vol. 11, No. 3 (2019), p.7.

⁹⁸³ David Kilcullen, *Blood Year: The Unravelling of Western Counterterrorism* (Oxford: Oxford University Press, 2016).

⁹⁸⁴ Richard J. Chasdi, *Serenade of Suffering: A Portrait of Middle East Terrorism, 1968-1993*, (Lexington: Lexington Books, 1999).

⁹⁸⁵ See Christopher D. Kolenda, *Leadership: The Warrior's Art* (New York: Stackpole Books, 2001).

Kenneth Yeo Yaoren, a Research Analyst with the International Centre of Political Violence and Terrorism Research (ICPVTR) and expert on the Leadership Decapitation strategy, postulated that despite overreliance on leadership decapitation operations, the outcomes it has yielded have been less than reliable. He concluded that, as a result of the unpredictability of this strategy, 'leadership decapitation, on its own, should not be seen as a silver bullet to defeat religiously-motivated terrorist groups.'⁹⁸⁶ Like Yaoren, Price also recognized the counterproductive potential of leadership decapitation strategies against modern terror organizations.⁹⁸⁷ To some extent, these critics rehearse some of the early critics of assassination to be found within the ranks of the CIA, typically Miles Copeland, who posited that this resulted in unpredictable change but often led to the rise of more energetic and able lieutenants.⁹⁸⁸

Of course, some disagree with this time-honoured position. Scholars like Steven R. David, Boaz Ganor, Daniel Byman, Mohammed M. Hafez and Joseph M. Hatfield are just a few such names in this group. Instead, these scholars have claimed that the operational capabilities of terrorist organizations naturally decrease after key high-ranking figures are eliminated, and therefore unable to plan and execute strategic or operational directives.⁹⁸⁹ Although this may be true in some cases, Price has found that 'the effect of decapitation decreases with the group's age, even to a point where it may have no effect at all.' Hezbollah, for instance, has been operational for decades and, during this time, has withstood numerous successful and failed leadership decapitation attempts. By Price's evaluation, this particular terror group is now more likely to withstand this form of attack as it has had experience in restructuring in the past. Generally speaking, extremist groups have an organizational structure that leaves them more susceptible to

⁹⁸⁶ Yaoren, 'Leadership Decapitation and the Impact on Terrorist Groups,' pp. 7-8.

⁹⁸⁷ Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' pp. 9-46.

⁹⁸⁸ Miles Copeland, *The Game Player: the confessions of the CIA's original political operative* (London: Aurum Press, Limited, 1989).

⁹⁸⁹ Steven R. David, 'Fatal Choices: Israel's Policy of Targeted Killings,' *Mideast Security and Policy Studies*, No. 51 (2002), pp. 1-26; Ganor, *The Counter-Terrorism Puzzle: A Guide for Decision Makers* (London: Transaction Publishers, 2006), p. 128; Daniel Byman, 'Do Targeted Killings Work?' *Foreign Affairs*, Vol. 85, No. 2 (2006), pp. 102-104; Steven R. David, 'Israel's Policy of Targeted Killings,' *Ethics and International Affairs*, Vol. 17, No. 1 (2003), p. 120; Mohammed M. Hafez and Joseph M. Hatfield, 'Do Targeted Assassinations Work? A Multivariate Analysis of Israeli-Counter-Terrorism Effectiveness During Al-Aqsa Uprising,' *Studies in Conflict and Terrorism*, Vol. 29, No. 4 (2006), pp. 359-382.

leadership decapitation strategies—since finding adequate replacements for executed leaders is often difficult.⁹⁹⁰

Still, as with every rule, there exist exceptions. Hezbollah has not yet exhibited any issues with its restructuring post-leadership decapitation operations. For instance, in 2012, Ali Alfoneh, a senior fellow at the Arab Gulf States Institute in Washington, predicted that Esmail Qaani would replace Soleimani as the next Quds Force Commander.⁹⁹¹ Qaani has more operational battlefield experience, a greater Iranian Revolutionary Guard Corps Quds Force (IRGC-QF) network, and a strong friendship with Ali Khamenei, the Supreme Leader. Now that Soleimani is dead, nothing is stopping Qaani from taking over the role. Hezbollah's durability can be attributed to their preparedness for unexpected restructuring; they have become hardened down the years, making them more likely to survive leadership decapitation attempts.

Advocates for this strategy have also claimed that leadership decapitation has resulted, in some cases, a weakening or destruction of a terror group's structure. Conversely, critics have pointed out that leadership decapitation increased group recruitment and radicalization in the cases wherein this outcome was not experienced.⁹⁹² This matter is perhaps most recently evidenced in the events which followed the Soleimani strike. Hezbollah was able to recruit a significant number of followers who wanted to avenge Soleimani's death and launch additional retaliatory strikes against US interests and personnel in the region.⁹⁹³

Yaoren notes that the survival of terror groups who, by all accounts, fulfill all of the criteria predicting their mortality in the case of leadership decapitation can be attributed to their desire for

⁹⁹⁰ Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' pp. 8-49.

⁹⁹¹ Ali Alfoneh, 'Esmail Qaani: The Next Revolutionary Guards QUDS Force Commander?' *American Enterprise Institute for Public Policy Research (AEI)*, Washington D.C., January 2012, pp. 1-11.

⁹⁹² Edward H. Kaplan, Alex Mintz, Shaul Mishal, and Claudio Samban, 'What Happened to Suicide Bombings in Israel? Insights from a Terror Stock Model,' *Studies in Conflict and Terrorism*, Vol. 28, No. 3 (2005), pp. 225-235; Audrey Kurth Cronin, 'How al-Qaida Ends: The Decline and Demise of Terrorist Groups,' *International Security*, Vol. 31, No. 1 (2006), p. 22.

⁹⁹³ Wael Taleb and Richard Hall, 'Hezbollah Supporters Say Revenge for Soleimani's Death Has Only Just Begun,' *Independent*, 17 January 2020.

revenge.⁹⁹⁴ Ultimately, we have to accept that responses to these attacks are partly a product of emotion, and political scientists find this an incredibly challenging area to introspect into. Once again, this demonstrates that even with the most comprehensive statistical analysis, no data set can predict human nature—furthermore illustrating the unpredictability and subsequent fallibility of the leadership decapitation strategy. For this reason, critics have maintained that leadership decapitation is ineffective in altering state or group behaviour, thwarting insurgencies, or even addressing drug cartels.⁹⁹⁵

For leadership decapitation to be successful, Price argues that two fairly-self-evident criteria must be fulfilled. The first is that the leaders themselves are vital to the particular organization. The second is that their replacement, or any unpredictable organizational restructuring for that matter, is difficult for the group in question to achieve. Yet even these things are hard to gauge, and due to this strategy's unpredictability, targeting the leaders of an extremist group could still have unforeseen consequences, even if the prerequisites mentioned above are satisfied. For years the reliance on leadership decapitation stemmed from the belief, as Price pointed out, that leadership succession in terror groups would be so complicated that the process itself would ultimately weaken the organization.⁹⁹⁶ Although this is true, there is a range of additional factors that makes leaders and succession almost impossible to predict in the context of an extremist group.⁹⁹⁷ In some ways, decapitation is emblematic of all covert action, it is often high risk, and the outcomes may be somewhat unexpected.

⁹⁹⁴ Yaoren, 'Leadership Decapitation and the Impact on Terrorist Groups,' p. 11.

⁹⁹⁵ Victor D. Hyder, *Decapitation Operations: Criteria for Targeting Enemy Leadership*, (Fort Leavenworth, Kans.: School of Advanced Military Studies, 2004); Michael Kenney, *From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies, and Competitive Adaptation* (University Park: Pennsylvania State University Press, 2007).

⁹⁹⁶ Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' pp. 13-17.

⁹⁹⁷ See Mette Eilstrup-Sangiovanni and Calvert Jones, 'Assessing the Dangers of Illicit Networks: Why al-Qaida May Be Less Threatening Than Many Think,' *International Security*, Vol. 33, No. 2 (2008), pp. 7-44; and Gordon H. McCormack, 'Terrorist Decision Making,' *Annual Review of Political Science*, Vol. 6 (2003), pp. 473-507. Both papers posit that the clandestine nature of a terror group impacts its ability to engage in organizational activities, whilst ensuring that its leaders remain pivotal to the structure of the group—making them quite difficult to replace.

According to Price, leaders and high-ranking officials in extremist organizations are typically charismatic. It is precisely why new members of such terror groups vow allegiance to both the cause and the leader. Thus, he argues, the organizational structure of terror groups is unique in that their leaders become engrained with the group, and therefore quite challenging to replace.⁹⁹⁸ Scholars have recently studied this phenomenon, concluding that a terror group's survival is indeed somewhat reliant on its charismatic leader's strength.⁹⁹⁹ Since such organizations' heads do not abide by, or respect, international rules or norms, their power is not derived from this typical legitimacy source. Instead, it is their charisma, sometimes even a personality cult, that affords them the power to recruit, radicalize and retain followers.¹⁰⁰⁰ So, as John C. Bahnsen, a retired United States Army Brigadier General and decorated veteran of the Vietnam War reasoned, it is this 'charisma [which becomes] the warrior's basis of authority.'¹⁰⁰¹

This finding can be seemingly be confirmed with an examination of the obverse situation. For instance, Yaoren has statistically determined that terror groups whose leaders have been relatively isolated from the group's operational activities fare better after having suffered a leadership decapitation attack.¹⁰⁰² So the strategy of leadership decapitation is only effective when used against leaders who are heavily involved in the terror group—in essence, becoming the

⁹⁹⁸ Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' pp. 13-15.

⁹⁹⁹ See Lorne L. Dawson, *Crises of Charismatic Legitimacy and Violent Behavior in New Religious Movements* (Cambridge: Cambridge University Press, 2002), pp. 80–101; T. W. Van Dongen, 'Law Enforcement as Politics by Other Means: Lessons from Countering Revolutionary Terrorism,' *Police Practice and Research*, Vol. 14 (2013), pp. 428–41; Lisa Langdon, Alexander J. Sarapu, and Matthew Wells, 'Targeting the Leadership of Terrorist and Insurgent Movements: Historical Lessons for Contemporary Policy Makers,' *Journal of Public and International Affairs*, Princeton University Press, Vol. 15, No.1 (2004), pp. 59–78; Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism'; Willi Winkler, *Die Geschichte Der RAF*, (Berlin: Rowohlt, 2007); Jenna Jordan, 'Attacking the Leader, Missing the Mark: Why Terrorist Groups Survive Decapitation Strikes,' *International Security*, Vol. 38, No. 4, (Spring 2014), pp.7-38.

¹⁰⁰⁰ Chasdi, *Serenade of Suffering: A Portrait of Middle East Terrorism, 1968-1993*.

¹⁰⁰¹ John C. Bahnsen, 'Charisma,' in Christopher Kolenda, ed., *Leadership: The Warrior's Art*, (Carlisle, Pa.: Army War College Foundational Press, 2001), p. 274.

¹⁰⁰² Yaoren, 'Leadership Decapitation and the Impact on Terrorist Groups,' p. 8.

nucleus of the group.¹⁰⁰³ Yet, these leaders—even if charismatic, still model traditional leadership styles.

In his seminal 1978 work on leadership, American political scientist James Burn identified two types of leaders: transactional or transformational. According to Burn, transactional leaders appealed to people's self-interested nature, providing members with benefits in exchange for their fellowship. Conversely, transformational leaders offer their followers non-tangible benefits, like personal growth, religious realizations or emotional development—even vision.¹⁰⁰⁴ In ideological groups, like terror organizations, transformational leaders are more effective as their charismatic nature establishes an emotional, spiritual or religious connection with their followers.¹⁰⁰⁵ So, if a leader is both charismatic and transformational, their elimination stands a higher chance of weakening the terror group in question.

Nevertheless, even with these findings, there remains no abiding scholarly consensus on whether a leadership decapitation strike negatively impacts a terror group's organizational performance.¹⁰⁰⁶ Some scholars report no impact, while others argue over whether it is positive or negative.¹⁰⁰⁷ Boaz Ganor, Executive Director of the International Institute for Counter-Terrorism, has argued that even if leadership decapitation has no discernable effect on a terror group's organizational structure, it may significantly impact the psyche of its members. However, under

¹⁰⁰³ See for example Marc Sageman, *Understanding Terror Networks* (Pennsylvania: University of Pennsylvania Press, 2004); Kathleen M. Carley, A Theory of Group Stability, *American Sociological Review*, Vol.56, No.3 (1991), pp. 331-354; Steven T. Zech, 'Decapitation, Disruption, and Unintended Consequences in Counterterrorism: Lessons from Islamist Terror Networks in Spain, Defense & Security Analysis,' Vol. 32, No.1 (2016), pp. 177-191; Ami Pedahzur and Arie Perliger, 'The Changing Nature of Suicide Attacks: A Social Network Perspective,' *Social Forces*, Vol. 84, No.4 (2006), pp. 1987-2008; and John Arquilla and David Ronfeldt, *Networks and Netwars: The Future of Terror, Crime, and Militancy* (Santa Barbara: Rand Corporation, 2001).

¹⁰⁰⁴ James MacGregor Burns, *Leadership*, (New York: Harper and Row, 1978), p. 20.

¹⁰⁰⁵ Ronald R. Aminzade, Jack A. Goldstone and Elizabeth J. Perry, 'Leadership Dynamics and Dynamics of Contention,' in Ronald R. Aminzade et. al. eds., *Silence and Voice in the Study of Contentious Politics*, (New York: Cambridge University Press, 2001) p. 152.

¹⁰⁰⁶ Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' p. 16.

¹⁰⁰⁷ Glenn Carroll, 'Dynamics of Publisher Succession in Newspaper Organizations,' *Administrative Sciences Quarterly*, Vol. 29, No. 1 (1984) pp. 93–113.

the right circumstances, this practice may serve as a deterrent—warning all high-ranking officials that they may suffer the same fate should they choose to assume the leader's position.¹⁰⁰⁸

But we must surely ask, is the potential of deterrence worth the known risk associated with the strategy of leadership decapitation? This scholarly disagreement illustrates the varying outcomes that this strategy has had on terror groups. In some cases, the group is weakened or eliminated, while in other cases, the group becomes stronger by increasing the radicalization of its members while recruiting new ones.¹⁰⁰⁹ These unpredictable outcomes demonstrate a flaw in the strategy as an over-arching strategy – the answer often lies in the local detail.¹⁰¹⁰

Another flaw is in the predictability of outcomes following a leadership decapitation operation. Scholars note that outcomes can vary from no effect to the extremist group's weakening or collapse (which intelligence agencies anticipate with each strike). The former is a neutral outcome, while the latter is positive. Overlooked in both the literature and policy on the subject is a third, prodigiously negative, outcome. Leadership decapitation could cause a terror group to

¹⁰⁰⁸ Ganor, *The Counter-terrorism Puzzle*.

¹⁰⁰⁹ See also Pamela Oliver, 'Rewards and Punishments as Selective Incentives for Collective Action: Theoretical Investigations,' *American Journal of Sociology*, Vol. 85, No.6 (1980), pp. 1356-75; Stephen T. Hosmer, 'Operations Against Enemy Leaders,' *Rand Corporation*, 2001; Robert A. Pape, 'The Strategic Logic of Suicide Terrorism,' *American Political Science Review*, Vol. 97, No.3 (2003), pp. 343-361; Douglas A. Hibbs, *Mass Political Violence: A Cross-National Causal Analysis* (New York: Wiley, 1973); Mohammed M. Hafez and Joseph M. Hatfield, 'Do Targeted Assassinations Work? A Multivariate Analysis of Israel's Controversial Tactic during Al- Aqsa Uprising 1,' *Studies in Conflict and Terrorism*, Vol. 29, No.2 (2006), pp. 359-82; Paschalis M. Kitromilides, 'Political Repression in Nineteenth Century Europe,' from *American Political Science Review*, Vol. 79, No.4 (1985), pp. 557-58; Stephen David, 'Fatal Choices: Israel's Policy of Targeted Killing,' *Begin-Sadat Center for Strategic Studies*, No. 51, 2010; Anthony Oberschall, *Social Conflict and Social Movements* (New York: Prentice Hall, 1973); Péter Marton, 'Investigating the Calculated Elimination of Removable Enemies: The Puzzle of Terrorism Decapitation Research,' *The Polish Quarterly of International Affairs*, Vol. 22, No.1 (2013), p. 63; Steven T. Zech, 'Decapitation, Disruption, and Unintended Consequences in Counterterrorism: Lessons from Islamist Terror Networks in Spain,' *Defense & Security Analysis*, Vol. 32, No.1 (2016), pp. 177-191; Audrey Kurth Cronin, 'How Al-Qaida Ends: The Decline and Demise of Terrorist Groups,' *International Security*, Vol. 31, No.1 (2006), pp. 7-48.

¹⁰¹⁰ Jenna Jordan, 'When Heads Roll: Assessing the Effectiveness of Leadership Decapitation,' *Security Studies*, Vol. 18, No.1 (2009), pp. 719-55.

fragment into several extremist groups.¹⁰¹¹ Instead of dealing with one non-state enemy, there is the potential that this strategy could propagate new threats.¹⁰¹² Compounding the problem is a serious issue, so perhaps, given the unpredictability of this strategy and the enemy's seemingly mutable nature, this strategy might be retired when dealing with modern terror organizations.

According to Price and his comprehensive works on the strategy of leadership decapitation,¹⁰¹³ (i) terrorist groups that have been decapitated are more likely to perish than those who have not been decapitated, (ii) newer terror groups have a higher mortality rate than older ones, (iii) the mortality of the terror group still increases regardless of the decapitation method, be it capture, death, or torture and eventual death, (iv) terror group mortality increases from any form of leadership restructuring, not just decapitation, (v) the size and scope of a terror group do not affect its susceptibility to leadership decapitation, (vi) and contrary to current studies, religious and ideological terror groups are easier to destroy using this strategy, perhaps due to the ideological value of the leader and their perceived irreplaceability. One must concede that this is an important range of propositions—even if one instinctively disagrees with them.

Price thus recommends states who are determined to employ this strategy to strike terror groups under twenty years of age. After this threshold, states should consider alternative counterterror options. Given that we know that the practitioners comb the academic journals looking for indicators—perhaps we might allow oneself the marginal comment here—quantitative political science has something to answer for? Yet, this is not always the case. For instance, after the 2008 assassination of Imad Mughniyeh, there was a markable decrease in the frequency and intensity of Hezbollah operations and attacks, suggesting that the leadership decapitation did weaken the organization significantly.¹⁰¹⁴ The variance in outcomes might be attributed to incompatible targets, inadequate knowledge of the strategy, or both.

¹⁰¹¹ Langdon, Sarapu, and Wells, 'Targeting the Leadership of Terrorist and Insurgent Movements: Historical Lessons for Contemporary Policy Makers,' p. 75.

¹⁰¹² David Kilcullen, *The Dragons and the Snakes: How the Rest Learned to Fight the West*, (Oxford: Oxford University Press, 2020).

¹⁰¹³ Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' pp. 43-44.

¹⁰¹⁴ Yaoren, 'Leadership Decapitation and the Impact on Terrorist Groups,' p. 10.

Accordingly, greater research is needed on the subject to gauge just how effective this strategy is in the face of modern terror organizations. Audrey Kurth Cronin, the foremost scholar and expert on how terror groups expire, published important material on leadership decapitation.¹⁰¹⁵ Cronin postulated that, rather remarkably, leadership decapitation has only recently been studied systematically—and so, an understanding of its impact in a real-life context is quite limited.¹⁰¹⁶ Admittedly, even the most prominent, widely circulated literature on leadership decapitation is weak and systematic, with scholars focusing on short-term effects, irrelevant timelines, or particular countries and case studies to derive their conclusions.

The most widely referenced study was conducted by Lisa Langdon and her colleagues in the mid-2000s. Unfortunately, this study analyzed the effects of leadership decapitation on nearly twenty groups over 250 years.¹⁰¹⁷ Accordingly, this report suffered from several problems. The two most prominent included incompatibility in cases chosen and a small data set of less than twenty groups, making any correlations or conclusions quite weak.¹⁰¹⁸ Instead, a greater number of values (groups) should have been analyzed to conclusively prove that a group's continued existence is not necessarily reliant on the survival or static nature of its leadership structure.¹⁰¹⁹ At the very least, the chosen groups should have been recognized as extremist organizations who have had leadership decapitation strategies used against them. The analysis period should have also been decreased to roughly 50 years to ensure that underlying cultural, legal and societal factors provide a congruent baseline from which to engage and derive statistically significant results.

¹⁰¹⁵ This body of literature is still in its early years and still requires further consideration and discussion within mainstream counterterrorism literature.

¹⁰¹⁶ Audrey Kurth Cronin, *Ending Terrorism: Lessons for Defeating al-Qaeda* (London: Routledge, 2008), p. 27.

¹⁰¹⁷ Langdon, Sarapu, and Wells, 'Targeting the Leadership of Terrorist and Insurgent Movements: Historical Lessons for Contemporary Policy Makers,' pp. 59–78.

¹⁰¹⁸ For instance, comparing the American Mormon Church with the Shining Path in Peru is ineffective. The latter has a history of violence and is viewed as a terrorist organization in the region within which it operates, while the former is a religious organization with no history of violence. These two groups have more differences than similarities—and having a dataset which is limited to begin with, but which have such stark differences between its values, ensures that the conclusions derived are not as objective nor statistically valuable as intended.

¹⁰¹⁹ Langdon, Sarapu, and Wells, 'Targeting the Leadership of Terrorist and Insurgent Movements: Historical Lessons for Contemporary Policy Makers,' p. 75.

As Langdon before him, Aaron Mannes suffered from the same issues in his study by relying on a small sample, which rendered his statistical results and subsequent conclusions insignificant.¹⁰²⁰ However, a year later, Jenna Jordan published a definitive, comprehensive study that avoided the methodological research pitfalls encountered by both Langdon and Mannes.¹⁰²¹ Her research's strengths were derived from its reliance on a better metric: the terror group's organizational survival after a leadership decapitation attempt. If a terror group restructured due to a strike, then this strategy's efficacy would be empirically observed. This metric is better than the studies undertaken by Mannes and Langdon, which only measured immediate effects, like the number of strikes on a group or the resulting kill count. Moreover, Jordan drastically limited her period of analysis to two years. This restriction allowed for a more concentrated analysis and subsequent short-term results. Nevertheless, Jordan's research was not without fault. Although she limited her analysis period to two years, this eliminated the possibility of measuring, or even observing, any long-term events resulting from these leadership decapitation attempts. So, while short-term results are important, long-term effects are similarly significant when considering the efficacy of leadership decapitation attempts on terrorist organizations.¹⁰²²

As a result, further works on leadership decapitation need to build upon earlier studies' findings and progress. The metric Jordan used has been useful in observing the effects of leadership decapitation on terror groups. Langdon was correct in realizing the need for observing long-term effects. And even Mannes, whose study suffered due to his limited sample, was still able to recognize that this strategy resulted in variable outcomes, furthermore contributing to the common belief that leadership decapitation can result in unpredictable outcomes.

¹⁰²⁰ Aaron Mannes, 'Testing the Snake Head Strategy: Does Killing or Capturing Its Leaders Reduce a Terrorist Group's Activity?' *Journal of International Policy Solutions*, Vol. 9, No.1 (2008), pp. 40–49.

¹⁰²¹ Jenna Jordan, 'When Heads Roll: Assessing the Effectiveness of Leadership Decapitation,' *Security Studies*, Vol. 18, No.3 (2009), p. 721.

¹⁰²² Price, 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' pp. 10-15 (Price paralleled this with the health care system and, more specifically, cancer treatments. If health care providers and their 'patients disregarded chemotherapy and radiation treatments, two of the most popular and successful regimens for treating many types of cancer, because of their painfully debilitating side effects in the short term,' then long-term benefits like increased life duration or even the potential to be completely cured, would be overlooked.)

Over the last twenty or so years, terror organizations have deliberately restructured—no longer operating in a purely hierarchical form.¹⁰²³ Aided by the advancements in technology and pressured by increasingly lethal counterterrorism strategies, these extremist organizations have begun to take on a more networked form, from which they launch guerrilla-style attacks. Therefore, taking out the ‘top’ of the organization is no longer an effective strategy to undertake, as the group's survival is no longer reliant on any individual. Therefore, killing Soleimani in an attempt to weaken Hezbollah and prompt regime change in Iran failed, miserably. The only outcomes it brought forth were adverse. Going forward, the US should recognize that leadership decapitation is no longer relevant, ethical, nor strategically beneficial. New options must be undertaken, and lessons must be learned from the past.

Other Prescriptive Ideas

Some scholars have even suggested strategies for dealing *diplomatically* with Iran.¹⁰²⁴ The most notable of whom has been Bruce Riedel. In 2008, he published six suggestions for the US to

¹⁰²³ See for example Lewis Herrington, ‘British Islamic Extremist Terrorism: The Declining Significance of Al-Qaeda and Pakistan,’ *International Affairs* Vol.91. No.1 (2015), pp. 17-35.

¹⁰²⁴ See for example Trita Parsi, *A Single Roll of the Dice: Obama’s Diplomacy with Iran*, (Yale University Press, 2012); John Bumbrell, *The Bush Administration: US Public Diplomacy in Iran*, (New York: Durham University Press, 2007); Steven Blockmans and Stefan Waizer, ‘E3+3 Coercive Diplomacy Towards Iran: Do the Economic Sanctions Add Up?’ *CEPS Policy Briefs*, 06 June 2013; Andrew Parasiliti, ‘Iran: Diplomacy and Deterrence, Global Politics and Strategy,’ *International Institute for Strategic Studies*, Vol. 51, No.5 (2009), pp. 5-13; Robert Jervis, ‘Getting to Yes with Iran: The Challenges of Coercive Diplomacy,’ *Foreign Affairs*, Issue 105 (January 2013); Constance Duncombe, ‘Twitter and Transformative Diplomacy: Social Media and Iran–US Relations,’ *Oxford Journal of International Affairs*, Volume 93, No.3, (2017), pp. 545–562; Curtis H. Martin, ‘Good Cop/Bad Cop as a Model of Nonproliferation Diplomacy Toward North Korea and Iran,’ *The Nonproliferation Review*, Vol. 14, No.1 (2007), pp. 61-88; Thomas R. Mattair, ‘The United States and Iran: Diplomacy, Sanctions and War,’ *Middle East Review*, Vol. 17, No.2, (2010), pp. 52-61; Anthony Newkirk, ‘Diplomacy and Hypocrisy: The Case of Iran,’ *Middle East Policy*, Vol. 15, No. 1 (2008), pp. 30-45; John Tirman, ‘Diplomacy, Terrorism, and National Narratives in the United States–Iran Relationship,’ *Critical Studies on Terrorism*, Vol. 2, No.3, (2009), pp. 527-539; Philip Caruso, ‘Suleimani is Dead, But Diplomacy Shouldn’t Be,’ *Foreign Press*, 06 January 2020; and Brian Katulis and Peter Juul, ‘Putting Diplomacy First: A Strategic Alternative to President Donald Trump’s ‘Maximum Pressure’ Approach on Iran,’ *Center for American Progress*, 12 March 2020.

consider to better relations with Iran. This section will attempt to determine which of these six suggestions were infringed during and post-strike on Soleimani. The following discussion will gauge how these infractions resulted in a rise in tensions between the two countries.

The first suggestion addressed military action. Employing a somewhat messianic language, Riedel warned against violent or aggressive US military operations in the region. He claimed that the US should have known military action might result in war—including how unfavourable that outcome would be for the world.¹⁰²⁵ According to Riedel, striking Iran or its officials would cause a chain reaction in the region—destabilizing more than just the target country. This is because an all-out war between the US and Iran would involve the entire Middle East.¹⁰²⁶ Unfortunately, this calculation proved prescient during the fallout from the Soleimani strike when Iran retaliated with missiles against a US military base in Iraq.¹⁰²⁷ At the time of writing, neither terrorists nor insurgents have avenged Soleimani's death—but it is still too early to assert that such a threat will not materialize. Perhaps this is a conflict postponed?

Perhaps hindered by the lockdown sanctions imposed by the Covid-19 pandemic, as of yet, it seems as though the aftermath of the Soleimani strike has somewhat fizzled out. Had this additional circumstance not existed, it could be reasonably assumed that Riedel's expected chain of events could have occurred as predicted based solely upon how the fallout began. Still, the fallout resulted in other consequences that Riedel did not anticipate. By having been a legally (and somewhat ethically) ambiguous strike, the US operation also came under scrutiny by international law scholars and advocates.¹⁰²⁸

¹⁰²⁵ Bruce Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' *The Brown Journal of World Affairs*, Vol. 15. No. 1 (2008), p. 109.

¹⁰²⁶ Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' pp. 108-110 ('Iran would have every incentive to strike US targets across the region with missiles, terrorists, and insurgents.')

¹⁰²⁷ David S. Cloud et. al., 'Iran Fires Missiles at Two Bases Housing US Forces in Iraq,' *Los Angeles Times*, 07 January 2020; and Karen Deyoung, Paul Sonne, and Dan Lamothe, 'Iran Launches Ballistic Missiles at Bases Housing US Military Personnel in Iraq,' *Washington Post*, 07 January 2020.

¹⁰²⁸ Milena Sterio, *The Legality of the United States' Strike on Soleimani*, Law Faculty Articles and Essays (Cleveland: Cleveland University Press, 2020); see also Agbada, 'Is the Killing of Qasem Soleimani by the United States of America Legal Under International Law?'; and Nakissa

Of course, Riedel could not have predicted that the United States would act in such a manner, but this is one serious consequence that did materialize and was not initially predicted. The military action against the Iranian general, launched while he was in Iraq, also offers a different (similarly unpredictable) dynamic. The violation of Iraqi sovereignty has resulted in another consequence. After being blindsided by the strike, Iraq immediately requested removing all US troops from its territory. The outcome of this strangely coincides with Trump's wish to retreat from the region, at least in terms of overt forces. Therefore, military action against an Iranian general resulted in the fallout predicted by Riedel and several other repercussions due to the illegality of the operation. This action raised tensions in the Middle East and, most surprisingly (and equally unexpected), within the United States. Domestically, lawmakers, government officials, reporters, and citizens voiced their dissatisfaction with the US justification for the strike on Soleimani, its apparent incompatibility with international laws, and the inadequacies of the Trump administration's responses post-strike.

Concern was also raised about the potential for a major conflict between the US and the Iranian regime.¹⁰²⁹ As mentioned earlier, all of the consequences illustrate how military action against Iran (even indirectly through the targeted killing of a high-ranking General) resulted in a domino-effect of mixed repercussions—some of which were predicted, but most of which were completely unexpected. Military action against any nation, particularly Iran, could result in adverse outcomes beyond even the most calculated threat assessments.

The second of Riedel's suggestions dealt with the issue of rhetoric.¹⁰³⁰ Words, especially in international politics, carry significant power. These become even more impactful when spoken

Jahanbani, 'Reviewing Iran's Proxies by Region: A Look Toward the Middle East, South Asia, and Africa,' *Combating Terrorism Center at West Point*, Vol. 13, No.5, (2020).

¹⁰²⁹ See Ahmed Salah Hashim, 'Iranian General's Killing: How Will Iran Respond?' *RSIS Commentaries*, Vol. 005, Issue 20, 2020.

¹⁰³⁰ Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' p. 110.

by leaders and high-ranking officials.¹⁰³¹ A simple speech can forge alliances, alleviate tensions, or even provoke war. In times of uncertainty, diction plays a particularly important role when deciding what avenues might best be used to quell tensions. If the dialogue between involved parties is strained or unproductive, then engagement could escalate to armed conflict. Conversely, if the communication line between these parties remains open, strong and professional, then the threat of escalation could be curtailed by engaging in meaningful diplomatic negotiations and discussions. For this reason, Riedel implored the US to carefully choose its words, particularly when it comes to Iran.¹⁰³²

Special consideration should be afforded to all communication directed at the Iranian regime, as there could be unforeseen elements that could misconstrue meaning, which might result in unintended consequences. Intended meanings lost in translation, incompatible cultural understandings, historical precedents, or even the current socio-economic and political affairs could all cause serious issues. Thus, successful diplomacy relies on the careful consideration and balance of the elements mentioned above to ensure that all parties involved can achieve their individual goals in a 'subtle manipulative manner' through a 'strategy by speech.'¹⁰³³

Thus, state conduct that does not abide by these considerations must be strategically avoided to uphold good diplomatic relations with as many states as possible.¹⁰³⁴ Since one cannot control what the other party will do, the best thing to do is control one's actions. Particularly given the history between the US and Iran, this recommendation should have been afforded special

¹⁰³¹ For a classical example see Eric A. Fleury, 'Daring and Deliberation: Virtue, Rhetoric, and Diplomacy in Thucydides' Account of the Athenian Empire,' *Journal of International Political Theory*, Vol.16, No.3 (2018), pp. 270-286

¹⁰³² See Ameer Ali Abbasi, 'Politics of Exclusion through Language in the Presidential Speeches of Donald Trump,' *SSRN*, 01 October 2019.

¹⁰³³ Robert A. Burgelman, *Strategy is Destiny: How Strategy-Making Shapes a Company's Future*, (New York, NY: The Free Press, 2002); and Matthias Wenzel and Jochen Koch, 'Strategy as Staged Performance: A Critical Discursive Perspective on Keynote Speeches as a Genre of Strategic Communication,' *Strategic Management Journal*, March 2018.

¹⁰³⁴ Sohrab Rezaei and Niloofar Nourali, 'Language and Power: The Use of Persuasive Techniques in Iran and US President Speeches,' *Journal of Language Teaching and Research*, Vol. 7, Issue 6, 01 November 2016, pp. 1203-1209.

attention.¹⁰³⁵ Alas, Trump is nothing if not direct. In both international and domestic situations, the US president has habitually opted for blunt, and occasionally even aggressive, dialogue.¹⁰³⁶ In diplomacy, the tone of communication is almost as critical as the content. ‘Calm voices,’ Riedel notes, ‘and frank assessments are better than heavy breathing and threats.’¹⁰³⁷ Aggressive behaviour would only escalate the situation and prove equally ineffective and counterproductive in the long-term (and perhaps even the short-term depending upon the nature of the communications in question).¹⁰³⁸

Given the immediate fallout following the death of Soleimani, it seems as though aggressive tweets and threatening statements only served to make the situation worse. Iran reciprocated each one of Trump’s aggressive tweets, resulting in a state of affairs that was uncertain, hostile and overall unproductive. By disregarding the importance of rhetoric, and instead engaging in aggressive discourse with Iran, the US escalated the situation further—compounding tensions from the Soleimani strike with the Iranian regime’s outrage over Trump’s tweets. It proved unproductive and contributed to a gradual breakdown in diplomacy and foreign relations (which were already strained) with Iran. Taunting the Iranian regime through aggressive and

¹⁰³⁵ See Birol Başkan, *Unsettling the Middle East: The Implications of the US Rhetoric and Action, Turkey and Qatar in the Tangled Geopolitics of the Middle East*, (Palgrave Pivot, New York, 2016), pp. 15-31; Lisa ten Brinke, ‘Donald Trump’s Rhetoric has only Highlighted the Already Growing Rift Between the EU and the US,’ *LSE European Politics and Policy (EUROPP) Blog*, 27 January 2018; Erin Baggott Carter, ‘Diversionary Cheap Talk: Economic Conditions and US Foreign Policy Rhetoric, 1945-2010,’ *International Interactions*, Vol. 46, Issue 2, 03 March 2020, pp. 163-198; and Daniel Byman, ‘Confronting Iran,’ *Journal of Survival: Global Politics and Strategy*, Vol. 60, Issue 1, 29 January 2018, pp. 107-128.

¹⁰³⁶ Alexander Agadjanian and Yusaku Horiuchi, ‘Has Trump Damaged the US Image Abroad? Decomposing the Effects of Policy Messages on Foreign Public Opinion,’ *Journal of Political Behavior*, 27 October 2018, pp. 1-22; see also Perry Parks, Covering Trump’s ‘Carnival’: A Rhetorical Alternative to ‘Objective’ Reporting, *Journal of Journalism Practice*, Vol. 13, Issue 10, 26 November 2019, pp. 1164-1184; and Morgan Marietta, Tyler Farley, Tyler Cote, and Paul Murphy, ‘The Rhetorical Psychology of Trumpism: Threat, Absolutism, and the Absolutist Threat,’ *The Forum*, Vol. 15, No. 2, (2017), pp. 313-332.

¹⁰³⁷ Riedel, ‘America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,’ p. 110.

¹⁰³⁸ See Shana Kushner Gadarian, ‘The Politics of Threat: How Terrorism News Shapes Foreign Policy Attitudes,’ *Journal of Politics*, Vol. 72, Issue 2, (2008), pp. 469-483; and Morgan Marietta, *The Politics of Sacred Rhetoric: Absolutist Appeals and Political Persuasion*, (Waco: Baylor University Press, 2012), pp. 7-23.

undiplomatic tweets can escalate quickly.¹⁰³⁹ Consequently, the US should consider its words carefully when dealing with Iran, as it has the power (and the influence) to retaliate in kind—leading to greater instability in the region. For the US, its rhetoric is perhaps as equally powerful as its military might, yet, it has proven far more challenging to control.

Given the rapidity and ease with which information is disseminated on social media platforms, the US should pay special attention to the nature and content of statements made. Self-censorship might be necessary if the US wants to address tensions and improve diplomatic relations with Iran. Otherwise, the US president's current rhetoric (on social media platforms like Twitter) will only undermine these objectives further, threatening the Middle East's peace and stability and the relationship between the US and its allies.¹⁰⁴⁰

Riedel's third suggestion stems from the implicit significance of diplomatic affairs within the international order of things. He reasoned that the US should continue to focus on improving its diplomatic relations.¹⁰⁴¹ This recommendation also refers to fostering a greater diplomatic relationship with international legal organizations and institutions. Going forward, especially when dealing with a dangerous adversary like Iran, the United States should seriously consider including the UN in discussions regarding major international military operations that might have the potential to become contentious.

Still, the issues between the US and Iran will not be resolved overnight. They have been problematic since the mid-twentieth century as the result of the 1953 coup.¹⁰⁴² The Soleimani strike certainly did not help the situation, and the fallout which ensued demonstrated the rapidity with which matters could escalate if unchecked by a higher authority or suppressed by diplomatic

¹⁰³⁹ See Mohammed Salah Mahmood, 'The Impact of President Trump's Tweets on US Foreign Policy Towards: Iran, Saudi Arabia and Israel,' *Tikrit Journal for Political Science*, No. 19, (2020), pp. 197-220.

¹⁰⁴⁰ Gabriel Rubin, *Donald Trump, Twitter, and Islamophobia: The End of Dignity in Presidential Rhetoric About Terrorism, Presidential Rhetoric on Terrorism under Bush, Obama and Trump*, (London: Palgrave Pivot, Cham, 2020), pp. 105-128.

¹⁰⁴¹ Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' p. 110.

¹⁰⁴² See for example Maysam Behraves, 'A Crisis of Confidence Revisited: Iran-West Tensions and Mutual Demonization,' *Journal of Asian Politics & Policy*, Vol. 3, No.3 (2011), pp. 327-347.

means. Twelve years ago, Riedel reasoned that the US should not launch operations against Iran, as missions with foreseeable short-term benefits could have unknown long-term consequences. This observation became Riedel's fourth suggestion. For a mission to be successful, the overall strategy must be viewed as superior to mere tactical wins.

Thus, Riedel sagaciously asks countries like the US to consider 'the long-term play.' US-Iran issues will not, and frankly cannot be quickly resolved. Perhaps now more than ever, the US should focus on creating a long-term foreign policy plan regarding Iran.¹⁰⁴³ Tensions have reached a new level since the Soleimani strike. Any higher and the fallout would be a direct, or even proxy, war—an outcome neither side favours. When compared to the US, Iran is at a disadvantage, militarily speaking. The US is similarly at a disadvantage, politically speaking since the American public strongly opposes any further intervention or military operations in the Middle East.¹⁰⁴⁴ It has been nearly two decades since the US invaded Iraq, and that conflict still has yet to see a peaceful resolution. Entering into yet another conflict is not something the American people, nor Congress, will accept.

Since the Soleimani strike has already occurred, there is no point dwelling over what could have been. What remains for academic analysis is to deal with the aftermath. Picking up the proverbial pieces and creating a long-term strategy of dealing with Iran that is sustainable, strategically favourable and democratically achievable. How this can be practically achieved is still up for political and scholarly debate.¹⁰⁴⁵ Since the fallout from the strike has resulted in rising tensions, it is now the US government's job to deal with the consequence and ensure that it never again favours short-term solutions over long-term goals. By keeping this in mind during the creation of policy and military strategy aimed at Iran, the US can get back on track to achieving a viable long-term play with favourable outcomes.

¹⁰⁴³ Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' p. 110.

¹⁰⁴⁴ Kaleigh Thomas and Emma Moore, 'The American Public Wants a Sustainable Middle East Policy,' *Defence One*, 22 February 2020.

¹⁰⁴⁵ For a deeper discussion on US policy change with consideration for modern security challenges, see Rubrick Biegon and Tom F. A. Watts, 'When Ends Trump Means: Continuity Versus Change in US Counterterrorism Policy,' *Journal of Global Affairs*, Vol. 6, Issue 1 (2020), pp. 37-53.

Long-term, the US might want to consider working with the regime to pursue mutually beneficial objectives. This proposal was Riedel's fifth suggestion. Nowhere is the ancient proverb, 'the enemy of my enemy is my friend,' more applicable than when considering Iran and al-Qaeda's relationship. Riedel reasoned that the US could stand to benefit by creating a new policy for dealing with Iran—one that broke free from the post-9/11 strategy and recognizes that Iran can be useful in addressing al-Qaeda, their common enemy.¹⁰⁴⁶ Unfortunately, this will prove exceedingly tricky since, after the strike on Soleimani, the Iranian regime reached out to its proxy, Hezbollah, and requested that it help target the US and its interests in the region.¹⁰⁴⁷

Clearly, by killing Soleimani, the US has driven the Iranian regime to forge stronger ties with extremist organizations. Rather than use Iran as an ally against a common enemy, US actions have coerced the regime into associating with them.¹⁰⁴⁸ At this point, there is no logical reason to discuss 'what should have been' or 'what could have been' if the US did not kill Soleimani. Instead, the US government should pay special attention to the role Iran could potentially play in the greater counter-terrorism strategy. Isolating or attacking Iran will not do any good. Perhaps the US should, in this case, seek to keep their friends close, but their enemies closer—for including Iran in the global war on terror strategy would be a better option than to isolate them completely.

Riedel's sixth suggestion builds on this exact point. He argues that it is in the US's interest to renew talks with Iran and invite it back into the community of nations.¹⁰⁴⁹ Continuing this long-term isolation policy against Iran will only prove detrimental to the international community.¹⁰⁵⁰

¹⁰⁴⁶ Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' p. 110.

¹⁰⁴⁷ Sulome Anderson, 'Iran's Proxy Threat is the Real Problem Now,' *Foreign Policy Report*, 10 January 2020; Tom Perry et. al., 'Hezbollah: It's Time for Iran's Allies to Start Working to Avenge Soleimani,' *Reuters*, 12 January 2020; Crispin Smith, 'After Soleimani Killing, Iran and Its Proxies Recalibrate in Iraq,' *Just Security*, 27 February 2020.

¹⁰⁴⁸ Nakissa Jahanbani, 'Beyond Soleimani: Implications for Iran's Proxy Network in Iraq and Syria,' *Combating Terrorism Center at West Point*, 20 January 2020.

¹⁰⁴⁹ Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' p. 110.

¹⁰⁵⁰ See Sean Yom, 'US Foreign Policy in the Middle East: The Logic of Hegemonic Retreat,' *Global Policy*, Vol. 11, Issue 1, 28 February 2020, pp. 75-83; and Gregory F. Gause,

The US would also benefit from having the regime as a diplomatic partner rather than a foe. As Riedel so eloquently put it, the US should recognize that diplomacy is a means to an end, not a declaration of weakness.¹⁰⁵¹ The most significant issue now facing the US is its degraded diplomatic relationship with Iran due to the Soleimani strike and, in the longer term, the extended war in Yemen. To address this, the US should consider asking for international intervention from the UN or its allies to achieve a semblance of a peaceful resolution to the rise in tensions between itself and Iran. This discourse will play a crucial part in achieving this—but only time will tell if US-Iran relations will ever achieve a state of peaceful diplomacy.

This section has examined six suggestions proposed by Bruce Riedel to determine which of these were infringed by the US in its targeted killing of Gen. Soleimani. As this analysis has shown, excusing differing degrees of infringement, the US managed to breach all six of Riedel's suggestions. Still, nothing is ever doom and gloom. Even considering the repercussions from the Soleimani strike, it is still not unreasonable to imagine that the US might one day forge a favourable, perhaps even a productive, relationship with the Iranian regime. After all, Iran is a country like any other seeking international approval, legitimacy and favour from its allies and populace. It may take years, or even decades, to obtain, but if the US is willing to consider and abide by the key suggestions Riedel proposed, there is an increased possibility that its diplomatic relationship with Iran might be restored, and perhaps even bettered.

Theoretical Speed Bump?

International law is by no means perfect. Yet despite its occasional limits, redundancies, irrelevancies and volatilities—it nonetheless holds undeniable power, capable of determining legality and conferring legitimacy. Still, some adamantly argue that international law is antiquated, thus holding a rather pessimistic view regarding its power to address contemporary matters. While it could be argued that some laws are somewhat unprepared to deal with these current

'The Illogic of Dual Containment,' *Journal of Foreign Affairs*, Vol. 73, No. 2, April 1994, pp. 56-66.

¹⁰⁵¹ Riedel, 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' p. 110.

circumstances, there are certain avenues which can be taken to improve the applicability and weight of the law. To adapt to the changing times, existing international norms, precedents and laws can be reformed, reworded and generally modernized to ensure that they are better prepared in addressing modern issues. Yet, both views of the law—one holding that it is unsalvageable, while another advocating for its retainment—have been regarded, by some scholars, as ‘extreme’ positions.

Offering a moderate perspective on the issue is Jack Goldsmith, an American lawyer, Harvard Law School professor, co-founder of Lawfare and former Assistant Attorney General for the Office of Legal Counsel during the George W. Bush administration.¹⁰⁵² Goldsmith has held a long-standing belief that although international law is essential, it has been slowly rendered ineffectual due to various circumstances, including globalization and norm evolution. He has been chosen for his ‘middle of the road’ views on the matter, in addition to his widely recognized works in international law, particularly his discussions on realism and idealism. However, before delving into a discussion on Goldsmith, it would be worthwhile to briefly introduce E.H. Carr, an English historian and International Relations theorist who initially discussed idealism in international relations.

In the early twentieth century, Carr published a ground-breaking text entitled *The Twenty Years' Crisis 1919-1939*. Despite being written nearly a century ago, many of the dilemmas and arguments discussed throughout the book have remained relevant today. Although Carr criticizes utopian theorists for disregarding the role of competition and survival in state actions, he nonetheless realized the importance that international law plays in regulating such activities. Ultimately, he concluded that international law might not be a ‘lost cause’ after all, but rather a starting point from which to pursue morality more broadly in international politics. Despite being coined a seminal work on classical realism,¹⁰⁵³ Carr argued that viewing international law through

¹⁰⁵² See Jack L. Goldsmith, ‘About,’ from www.jackgoldsmith.org; Goldsmith was also briefly introduced in Chapter three. Please refer to the literature review for a greater discussion on his views of pre-attack self-defence.

¹⁰⁵³ See Peter Wilson, ‘The Myth of the ‘First Great Debate,’ In Tim Dunne, Michael Cox & Ken Booth (ed.), *The Eighty Years' Crisis: International Relations 1919–1999*, (Cambridge: Cambridge University Press, 1998), pp. xiii–xx, 1–16.

a pure realist lens is unproductive. According to Carr, ‘utopia and reality are thus the two facets of political science. Sound political thought and sound political life will be found only where both have their place.’¹⁰⁵⁴ Hence, finding this middle ground—between realism and utopian ideals—would render international law more effective.

Although Carr criticized idealism in international law, it was Goldsmith who later recognized that this view was nonetheless informing international politics. In 2005, Goldsmith and Stephen Krasner, an American academic and former diplomat, co-authored an article examining the limits of idealism in international law. They posited that considering the current era of globalization, international law might no longer be a sufficient constraint on state actions. Nevertheless, they did admit that idealism is reasonably evident in international law. There are, according to Goldsmith and Krasner, several developments which reflect this quite clearly, including ‘the rise of universal jurisdiction, the creation of a new International Criminal Court, and recurring demands for humanitarian intervention,’ all of which reflect this renewed commitment to idealism at the international level.¹⁰⁵⁵

This dissertation has attempted to follow Goldsmith and Krasner's line of reasoning, which suggests that legitimacy and justice are more readily obtained in the absence of state-level pressures or ongoing political interference. The authors believe that despite the potential issues caused by idealist or utopian views, ‘institutions and principles that minimize the influence of power better achieve justice than those in which power plays an important role; and decisions made by accountable actors, especially judges, are more likely to be just than decisions made by political leaders responsible for their electorate.’¹⁰⁵⁶ Since international law is insulated from the political fervour typically found at the state level, legality and legitimacy can thus be determined impartially and imperturbably.

¹⁰⁵⁴ E. H. Carr, *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations*, 2nd ed., (London: MacMillan, 1946), p. 10.

¹⁰⁵⁵ Jack L. Goldsmith and Stephen D. Krasner, ‘The Limits of Idealism,’ from *The Globalization of International Law*, Routledge, 2005.

¹⁰⁵⁶ Goldsmith and Krasner, ‘The Limits of Idealism,’ p. 1.

Later that same year, Goldsmith co-authored a book with Eric A. Posner, an American law professor, examining the limits of international law. Using basic game theory, they examined the role of international law in U.S. foreign policy and concluded that although the law matters, it is no longer as powerful as it once was. The authors contended that international law had become a product of state interests, rendering the law incapable of forcing states to modify their actions in a way that might neglect their interests—thereby making it quite limited in this sense. While Goldsmith and Posner view the law as an evolving instrument of national policy, they also recognize that it is a volatile, mutable, and unreliable tool. Thus, they posited that all international law proponents are overly optimistic about its power, relevance, and current operational capacities.¹⁰⁵⁷ If international law can no longer stand-alone, then perhaps it might have more clout and greater pertinence if supplemented theoretically and practically. Thus, this dissertation recognizes the challenges and limitations of international law but argues that when combined with scholarly prescriptions and strategic military policies and practices—these deficiencies can be addressed through a ‘patchwork’ of sorts. Hence, making it more likely for a global problem to be addressed, if not by law, then by scholarly prescriptions or current strategic military policy.

Two years later, in 2007, Goldsmith published *The Terror Presidency*, in which he recounted his time working as legal counsel in the George W. Bush administration. Goldsmith addressed topics like the war on terror, the Iraq invasion, and the widely publicized Geneva convention violations at Guantanamo Bay. Notably, he argued that the Bush administration made one critical strategic error in their post-9/11 foreign policy. Instead of seeking congressional support and ensuring compliance with the law, they opted to act unilaterally in launching the war on terror. Goldsmith admitted that this focus on hard power could have come from a place of anxiety and fear about the potential for a future terror attack, but ultimately argued that fear had no place in policy. In the end, the decision to rely on hard power was, as Goldsmith reasoned, counterproductive in the war on terror and the perceived legitimacy of the presidential administration. The author ultimately concluded that the soft power of persuasion achieved through legal means would have been much more effective in reaching their objectives and

¹⁰⁵⁷ Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law*, (Michigan: Oxford University Press, 2005).

maintaining legitimacy in executive actions.¹⁰⁵⁸ This view is fundamental and one which has been similarly promulgated in this dissertation. Laws should be followed, but more importantly, soft power must be viewed as the first resort in foreign policy, rather than the last.

Several years later, Goldsmith publishes *Power and Constraint*, in which he once again revisited the practices and policies of the Bush administration. This time, however, he examined the accountability and transparency of the presidency post-9/11. He concluded that, as a result of ‘presidential synopticon,’ the executive branch was highly checked (both internally and externally) but Congress, policymakers, lawmakers, politicians, ethicists, journalists and even scholars. All of these various actors carefully monitored the executive branch's actions, ensured that they complied with existing law, coerced the president to change any actions that did not, and demanded justifications for all such activities. Contentiously, Goldsmith even argued that this made counter-terror operations more ‘legitimate’ due to the high degree of transparency required for this oversight.¹⁰⁵⁹ Although this may have been the case in the early 2000s, it can be argued that this ‘presidential synopticon’ was absent during the Trump administration. Had it been operating to the same extent as it did during the Bush presidency, perhaps the Soleimani strike would not have occurred. Following the strike, domestic criticism abounded. Yet, little to no evidence was ever provided to Congress, policymakers, legal practitioners, or journalists to justify the Trump administration's actions.

Goldsmith may have been correct when he claimed that the executive branch during the Bush administration was accountable and transparent, but this position is not perpetual. With each new administration and each new decade, circumstances change, rendering previous opinions or evaluations inapplicable. This could be observed, logically speaking, in the case of international law as well. What Goldsmith once brushed off as ineffectual could very much serve as an essential determinant of legitimacy in the future. Times change, circumstances change, and with it, so does international law and its supposed efficacy.

¹⁰⁵⁸ Jack L. Goldsmith, *The Terror Presidency: Law and Judgement Inside the Bush Administration*, (W.W. Norton, 2007), pp. 43-70, 99-140, 177-216.

¹⁰⁵⁹ Jack L. Goldsmith, *Power and Constraint: The Accountable Presidency After 9/11*, (W.W. Norton, 2012).

This dissertation has attempted to argue that international laws, even if outdated or inapplicable, can serve as a theoretical speedbump—slowing down states just long enough to make them ruminate over potentially reckless foreign policy actions. Without them, states, like the US, could potentially act in an increasingly self-serving manner with complete disregard for the international community, morality, or ethics. While international law may never fully address or constrain specific actions, it still serves as a worthwhile condition by inhibiting states from undertaking potentially dangerous, self-serving or corrupt pursuits.

Why Critique the Soleimani Strike?

Anything worth criticizing is worth salvaging. The US counter-terror programme is no different. However, its current use of UAVs in pre-attack self-defence operations further exacerbates the issues that each element faces separately. Drones have proven to be questionable weapons, while the practice of pre-attack self-defence has similarly demonstrated this contentiousness. Thus, putting these two elements together only compounds this contentiousness. States should not use drones in their pre-attack self-defence practice as both elements are highly contested, challenging to regulate, and widely disavowed.

Nevertheless, there are obvious benefits to using remote weapons in counterterror operations. When used responsibly, a drone is a remarkable weapon with unparalleled efficacy. However, if this weapon is not responsibly used, problematic international and domestic issues abound. Thus, when using covert weapons in publicly reported missions, legality needs to be sufficiently demonstrable to confer legitimacy in the court of public opinion. It is because, as Lee Atwater so eloquently noted, ‘perception is reality’¹⁰⁶⁰—particularly in government-sponsored military operations.

This dissertation sought to identify the basic legal and scholarly conditions necessary to demonstrate legitimacy in such operations. The Soleimani strike then offered a contemporary case study that could be analyzed to determine its legitimacy according to the conditions identified

¹⁰⁶⁰ Quote from American Political Strategist Lee Atwater, 1951-1991.

above. The purpose of this was to identify any discrepancies between the US government claims and actual findings. However, military drone usage in US counter-terror operations is strategically effective at attaining its objectives. Moreover, heavy reliance on this choice of weapon demonstrates that calls for abandonment are both impractical and naïve.

Similarly, there is an urgent need to modernize international law in order to make them better able to inhibit contentious strategies, like those found in the US drone program. Likewise, clear policy objectives need to be further developed and implemented to ensure that future military operations that rely on this preemptive use of force are regulated by external objective decision-makers and not covert intelligence agencies. Should the US counterterror programme want to become (or appear to become) more legitimate, particularly when relying on drones, and especially when these remote weapons are used in pre-attack self-defence operations—the following seven points should be considered.

Seven Recommendations

1. Stop using military UAVs in unclear pre-attack self-defence operations.
2. Stop using pre-attack self-defence altogether.
3. If relying on pre-attack self-defence in unclear situations, keep the operation covert—let the CIA direct the operation, and not publicly announce the intent, progress or outcome of such missions.
4. Engage in an independent pre-strike assessment. If choosing against consultation with the UN Security Council, ensure that this assessment identifies to what degree the operation may adhere to international legal parameters of pre-attack self-defence. It is particularly important in operations that are not covertly undertaken. If the US wishes for the operation to retain legitimacy, demonstrate its legality, and maintain its overall international reputation, this assessment must be publicly released.
5. Retrofit existing military UAVs with more diverse payloads, perhaps non-lethal options capable of engaging threats in a more proportional manner.
6. Use proxies to ensure plausible deniability (just like the US did when relying on Israel to execute the Mughniyeh operation).

7. Diplomatic means, measures and avenues. Enlist the help and guidance of the UN Security Council to mediate any future conflict between states, to avoid confrontation or covert operations.

Chapter 10: Conclusion

The start of this decade was certainly an eventful one for the United States. In January, the US killed Gen. Qasem Soleimani and experienced the consequences of that drone strike. In February, US President Donald J. Trump became the third president in United States' history to be impeached by the House of Representatives on charges of abuse of power and obstruction of justice. He was allowed to remain in office after the Senate, which boasted a Republican majority, acquitted him. In March, the Covid-19 pandemic tightened its grip on the world. Perhaps the fallout from the Soleimani strike would have continued and escalated between the US and Iran. But with the global shutdowns, these plans may have been somewhat quashed or deferred as governments scrambled to close borders, secure their populace and focus on health care issues—putting national security, to some degree, on the back burner.

Perhaps the US over-stepped the mark one too many times when it ordered the strike on Soleimani. First, the use of lethal drones made the operation look like murder. Enlisting an unmanned weapon in a supposed self-defence operation is problematic in that it lacks a proportional response—thus placing the risk solely on those targeted. Second, publicly reporting the Soleimani strike opened it up for domestic and international investigation, opposition, outcry, and condemnation. Third, the execution of the strike in a third-party state, namely Iraq, without its knowledge or consent resulted in a violation of its sovereignty. Fourth, the targeting of an active foreign government official would have, in most other cases, been considered an act of war. Remembering, of course, that the first world war began with the assassination of a state official, the Austrian Archduke Franz Ferdinand. As such, the correct label for the Soleimani strike would not be a targeted killing but rather an execution by drone. Fifth, the lack of presented intelligence and the routine shift in government statements has raised suspicions as to the credibility of the information presented and the true motivations behind the strike.

Also, if Soleimani were, as the US claims, a high-ranking operational member of a terror group at the time of his death, killing him would have an adverse effect. It would incite his followers to seek revenge for his death, thereby increasing recruitment and radicalization along with the potential for more terror plots. Available intelligence suggests that Soleimani was most

active in terror groups, like Hezbollah, in the first decade of the 21st century. So, by all accounts, Soleimani posed more of a threat in 2008, when Bush chose not to strike him (in fear it would ‘destabilize the region’), than he did in 2020. Yes, Soleimani had been involved with terrorist organizations at various points in his life. But without proof of constituting an imminent threat at the time of his targeting, the US claim of pre-attack self-defence cannot be viewed as legitimate. If imminence could not be established, then why did the Trump administration not: (i) just kill him and admit it was revenge for his past participation in terror plots as they did for Abu Bakr al-Baghdadi and Osama bin Laden? or (ii) covertly kill him and therefore have no need to justify or explain the choice publicly.

It is hard to escape the feeling of general anathema that underscores the public’s perception of the US drone counter-terror program. The targeted killing of Soleimani was not just a precipitating factor, but rather an amplifying event to an already contentious program. Years of illegal covert US drone operations, together with lax rules, norms, and procedures, allowed the Soleimani targeted killing to occur. The Trump administration built upon – but also competed with the previous administrations of Obama and Bush. Thus, the Soleimani strike has only served to compound the contentiousness of the US counter-terror drone program. With weak or unavailable intelligence, shifting statements, and threats of revenge attacks, the Trump administration managed to cast doubt on an already problematic program. The US response to the Soleimani strike was further detrimental. President Trump, in particular, was aggressive in the statements he made via Twitter. Instead of calming sentiments, he threatened to attack fifty-two Iranian cultural sites. The mere threat of doing so violated international law. Then a domino effect of unimaginable fallout ensued—including the accidental downing of a Ukrainian passenger jet, protests, media backlash, and an increase in tensions between two nuclear-capable states. Some experts even went so far as to warn of the potential for a third world war.

Still, there were ways to curtail at least some of these issues. It might be wise for the US to keep a few of these in mind for similar future operations. The general conclusion is that (i) either drone operations remain covert to avoid the fallout experienced after the Soleimani strike, or (ii) pre-attack self-defence should no longer involve remote lethal weaponry. If they do, the intelligence must be concrete, verifiable, objective and sufficient to convince any potential critic

of the necessity of preemptive action. There is a risk of repeating the Soleimani strike's consequences if this is not kept in mind. Perhaps next time, it will go further than just a rise in political tensions, collateral damage or a mere threat of a world war.

Moreover, in the absence of evidentiary support to prove the imminence, necessity, proportionality, or gravity of the supposed threat posed by Soleimani, the strike which ultimately killed him cannot be deemed in accordance with the law of pre-attack self-defence, as none of the aforementioned required criteria were sufficiently demonstrable. US President Trump alleged that the imminent threat was directed against several US embassies in the Middle East. However, no evidence nor intelligence presented in any briefing, including those given to the highest-ranking Congress members and the House of Representatives, has corroborated this claim. Equally problematic was the fact that the US chose against soliciting the input of the UN Security Council. Had the US sought guidance, input, or support from this international body, the overall evaluation of the Soleimani strike's legitimacy could have changed even if other variables did not. This is simply because the UN has the power to confer legitimacy in an unparalleled way. Even in the absence of available intelligence or proof of imminence, the US strike on Soleimani could have been deemed legitimate if this impartial international body had authorized the action. The Trump administration has adamantly claimed that there is overwhelming evidence to prove that the Soleimani strike was legitimate. If this were true, then the UN Security Council would have reached the same conclusion. Since this was not the case, this exclusive source of legitimacy became a thwarted opportunity.

Legitimacy in state actions can be typically derived from one of two key sources—either the public or the law, but ideally, both. In the case of the Soleimani strike, one might argue that the US prematurely claimed legitimacy by citing adherence to the customary international law of pre-attack self-defence. A lack of evidence and intelligence disclosure to corroborate such an assertion led to skepticism amongst lawmakers, government officials, the media and the public regarding the true motivations behind the strike. So, if neither the law nor the public bestowed their legitimacy on the operation, then where is it derived from? Indeed, there have been cases in which international law was violated, but the operation was still viewed as legitimate. The US intervention in Kosovo is just one such example. However, this operation was undertaken with the

international community's support and carried out alongside an official NATO campaign. However, the Soleimani strike did not have international support, nor did it demonstrate adherence to the law. In a best-case scenario, legitimacy is derived from both adherence to the law and public support. The Soleimani strike had neither.

Although the US has claimed that the customary law of pre-attack self-defence was outdated, it nonetheless attempted to justify its adherence to its parameters. For even if a law is inapplicable, states will attempt to concoct some justification as to why their actions abide by such doctrines for the sake of gaining or maintaining its perceived legitimacy. Thus, the US counter-terror programme can be regarded as a dog with a collar but no leash. These operations may try and appear legitimate, but they act as though they are unconstrained by international law. At this point, a muzzle will not work, as there already is a general lack of transparency in the program. Perhaps an update to the customary law of pre-attack self-defence, or the introduction of amendments, might be able to constrain state-sponsored preemptive practices. At the domestic (state) level, governments should establish a sufficient level of accountability, transparency, and oversight to avoid some of the US issues following the Soleimani strike.

In order to avoid the repetition of history, one must seek to learn lessons from the past. Not just from legal precedents like the Caroline affair, which originally informed the creation of the customary law of pre-attack self-defence, but also past counter-terror operations, like the Fadlallah affair and the Mughniyeh operation. For decades, the US had engaged, either covertly or through proxies, in operations to eliminate key terrorists in the middle east. A question then arises: Why break with the status quo and expose one's state to international and domestic scrutiny? Perhaps the Trump administration was driven by the desire to publicly match the Obama administration's killing of Osama bin Laden or garner support for an upcoming federal election. Whatever the true motivation for the strike, this dissertation has demonstrated that the US claim for legitimacy, derived from the imminence of a supposed threat and its presupposed adherence to customary law, is, in the present absence of credible intelligence, weak and unfounded.

Critics might also question why the use of force should be governed on the basis of a debate about a diplomatic crisis in 1837. Well, first, the case was precedent-setting. It offered an example

of how such a law might be applied in a real-world context. However, this does not mean that this is the only way this law could be interpreted. It just offers one historic example capable of evaluation from its onset to its fallout. Second, the US was the one to publicly claim adherence to such a law, based on the Caroline affair. The US even went so far as to pen a letter to the UN in which it justified its actions in accordance with the principle. This dissertation can be understood as merely fact-checking such a claim, with the objective of determining whether the customary international law of pre-attack self-defence could lend legitimacy to the U.S. drone strike on Soleimani.

Unsurprisingly, legal scholars, journalists and policymakers alike tried to answer this very question following the Soleimani strike. Unfortunately, their quick examinations only resulted in superficial conclusions. The reasons for this vary. However, several media sources attempted to conclude that the US strike violated international law by considering one or two factors: the degree of intelligence disclosures or the tone of presidential statements. Evidently, such conclusions were biased and unreliable. Additionally, existing studies and literature on the topic were somewhat patchy, making it difficult to assess the strike's legitimacy without a comprehensive framework. Therefore, it became apparent that a framework needed to be developed which would be capable of qualitatively assessing the legitimacy of state actions claimed as pre-attack self-defence. A comprehensive set of criteria was compiled from pertinent international law, scholarly prescriptions and existing military strategy to achieve this. The criteria included within these frameworks were inspired by international law and the seminal works of Abraham D. Sofaer, Michael W. Doyle and Michael L. Walzer, whose scholarly prescriptions were used as a point of comparison, confirmation and contradistinction. This project set out to determine whether the Soleimani strike was legitimate. A few questions posed by previous scholars were answered along the way, while new ones were raised. Through meticulous and systematic planning, the dissertation objectives and queries posed at the onset of this project were also sufficiently answered.

The main inquiry sought to determine whether the US drone strike against Gen. Soleimani abided by the legal conditions outlined in the customary international law of pre-attack self-defence. The simple answer is no. This conclusion was reached by comparing the known facts about the Soleimani strike with the requirements and criteria within the three developed

frameworks within this dissertation. For instance, the Trump administration's refusal to present intelligence, in addition to illegal actions during the strike (including, but not limited to, the violation of Iraq's air sovereignty), allowed for this conclusion to be reached.

Moreover, the US made two claims following the strike on Soleimani. The first was that the Soleimani strike was a counter-terrorism operation. The second was that this operation was undertaken in accordance with the customary international law of pre-attack self-defence. The first assertion can be corroborated. Unquestionably, Soleimani did have a history of associating and aiding terrorist organizations, like Hezbollah, on numerous occasions. Since Hezbollah is considered a terrorist organization, Soleimani's past actions can be seen as aiding and abetting terrorism. Consequently, Soleimani can be considered a terrorist. So, by extension, the operation which targeted him can be referred to as a counter-terror operation. However, the second claim, namely that the strike that killed Soleimani adhered to pre-attack self-defence requirements, cannot be easily determined. Thus, this dissertation sought to determine the legitimacy of the targeted killing of General Soleimani by examining whether the US claim to pre-attack self-defence was valid.

Three additional questions were posed in accordance with the main research query, all of which were also effectively addressed. The first of these questioned what additional criteria must be sufficiently demonstrable to ascertain the Soleimani strike's legitimacy. In other words, what did the US need to do for the Soleimani strike to be seen as legitimate? These criteria were identified and used within the three frameworks developed for the classification. The second questioned whether legitimacy relies on proof of imminence. Short answer, yes. If not publicly reported, at the very least high-ranking government officials should be provided with this evidence. In the case of the Soleimani strike, this was not demonstrated. Confusion, doubt and dissatisfaction with presented intelligence did not only come from the general public and the media. Several members from the 'Gang of Eight' were left unconvinced by the Trump administration's claim that Soleimani posed an 'imminent threat' at the time of his death. It should be noted that the 'Gang of Eight' is an elite group of high-ranking US government officials who possess the security clearances necessary to view all available intelligence on the Soleimani strike. Even so, they called the intelligence they received 'weak,' 'unconvincing,' and 'sophomoric.'

The third question was closely related to the second in that it pondered whether a lack of available intelligence would affect the perceived legitimacy of the operation, and by extension, the greater US counter-terror program. Again, the answer was determined to be a definite yes. Greater intelligence disclosures do translate into a greater degree of trust, accountability and legitimacy. Unfortunately, the information surrounding the strike on Soleimani remains both limited and unstable, especially given that government statements about the operation shifted from one day to the next. These shifting government statements lessened the degree of perceived legitimacy of the Soleimani strike. If a lack of intelligence was not enough of an issue, intelligence presented by the US government was now understood as opinion-based and subjective. The Trump administration seemingly artificially decreased the perceived legitimacy of the Soleimani operation by offering shifting statements on a somewhat regular basis. If anything, the fallout following the strike on Soleimani reaffirms the need for credible intelligence, transparency and accountability—not only in covert operations but in government responses to them as well.

So, rather than undertake a top-down approach of evaluating the strike's legitimacy by considering the known facts about the operation as a central condition against which all factors are applied, this project took a different, bottom-up approach. International law and seminal works on the topic were methodically scoured for commonalities. If certain criteria found in international law were also prominently discussed by scholars, these were noted and later used to develop tables capable of systematically assessing pre-attack self-defence cases. Additionally, if scholars suggested the inclusion of certain factors in future research, like the nature of intelligence disclosures, these were also considered and included in the developed tables, whenever possible. Rather than attempt to discuss legitimacy through hypothetical concepts, as had been done by journalists and policymakers shortly after the strike, this dissertation instead opted to develop a definite list of criteria capable of ascertaining the legitimacy of any state actions justified per the law of pre-attack self-defence, not just the Soleimani strike. In this way, the focal point became the framework against which the strike's known factors were measured and compared. As such, this dissertation is an innovative attempt to apply an international law framework to a key case.

Developing this comprehensive framework was painstaking. Yet, without such a framework, conclusions about the strike's legitimacy could not have been credibly made. While this dissertation was initially undertaken to determine the legitimacy of the Soleimani strike, it became quickly evident that this would not be possible by merely referring to existing literature. Thus, a secondary goal quickly took form. The purpose was to develop a framework that would make the analysis of the Soleimani strike easier and contribute to the literature on the topic by providing a scholarly and strategically practical way of determining the legitimacy and legality of other pre-attack self-defence operations as well. Theoretically, this would benefit scholars in their attempts to examine state actions that have already occurred. Moreover, this framework may also have a practical application by providing states with a clear and concise litmus test against which to measure the legitimacy of proposed preemptive state actions. This would improve efficiency, transparency, ethicality, and legality, resulting in a greater potential for legitimacy in preemptive operations.

Subsequently, this dissertation would be of value for policymakers, scholars, government officials, and even journalists—who might benefit from having a comprehensive way to analyze future pre-attack self-defence operations. The findings contained herein have implications not only in theory and practice but also for further research. As such, even the limitations identified at the onset of this project could serve as future research areas. The first includes an imbalance in perspectives due to limited English language sources representing the Iranian perspective. It might be worthwhile for Iranian scholars to offer their input on this topic to create a more inclusive and widely applicable framework. The second is an opportunity for scholars to use the frameworks developed in this dissertation as a starting point for quantitative assessments on the subject. At the onset of this project, a qualitative assessment of the strike was favourable because of the sorts of information available (e.g. government statements) and the lack of intelligence disclosure regarding the operation. However, future releases, including potential Freedom of Information Act requests, may result in greater disclosure, allowing for more data-driven analyses.

This dissertation has sought to find the answers to a number of pressing questions regarding the drone strike on the Iranian General, the US justification for the operation, and whether this did legitimately adhere to the customary international law of pre-attack self-defence. Several questions

were raised during the process of these discussions, examinations and analyses. For instance, when is assassination justified? Why do policymakers keep using it despite its negative consequences? And is secrecy a diminishing commodity in 21st century intelligence operations? It would be a worthwhile endeavour for future research in the area to include a discussion or analysis on these matters.

The Soleimani strike has also provided scholars with an opportunity to gauge the present relevance of international law in its ability to constrain state behaviour. Perhaps legal scholars might seek to conduct future research on the issue, examining the points at which international law has weakened, to offer suggestions for potential reform or modification. This dissertation attempted to demonstrate that scholarly prescriptions could be used as an ‘update’ to international law to make it more relevant and therefore applicable. Undoubtedly, there will always be a need for an even more robust framework with a clearly defined set of immutable parameters and restrictions capable of addressing modern threats and dilemmas. Although this project does not claim to develop such a universal solution, it does humbly offer the first step in this direction.

Moreover, this dissertation does not claim to get inside the minds of US decision-makers. In the case of the Soleimani strike, it is quite unnecessary, as most government officials have already publicly voiced their opinions (or disdain) on the quality of intelligence offered. As such, publicly known information was used to reach the conclusions herein and systematically determine the Soleimani strike's legitimacy. So, if the Trump administration considered the intelligence they disclosed to Congress as sufficient to justify the strike's legitimacy, then this should be sufficient for this project. This is especially noteworthy considering that several congress members confirmed that they learned more about the strike from the news than the briefings provided by the White House. Additionally, open-source information also enhances the credibility and trustworthiness of the research undertaken, aiding both replicability and verification.

In the end, international law may not always be capable of applying to all cases, especially given the modernity of certain matters, but it will always be a source of legitimacy that states will attempt to claim. Although, at this point, there is no use in condemning the US for the Soleimani strike. Nothing productive can come of it. What is necessary, however, is for the US to learn from

its mistakes. To achieve this, a determination of exactly how the US erred needed to be made. Therefore, the purpose of this dissertation was not to denigrate the US counter-terror program, for it has garnered notable strategic benefits. Rather, the point was to demonstrate how it might be improved—by developing a framework capable of highlighting the issues that undermined its legitimacy in the Soleimani strike, to ensure that future operations can avoid such pitfalls. Still, if there is one takeaway from this dissertation, it is this: international law should be analyzed skeptically, but not cynically. Even inapplicable or outdated laws have a purpose. Some morally caution states from engaging in hazardous activities, while others dissuade self-serving actions. But by and large, laws are formed based on a collective understanding that in order to belong to the international community, there is a proper way of conduct that will ensure the preservation of one's legitimacy. Regrettably, by striking the shadow commander, the US has plunged its counter-terror programme into an abyss—a place where legality is subjectively construed, and legitimacy is superficially ascertained.

Appendix: Terminology

As gathered from the discussion undertaken in this dissertation, there remains a certain degree of confusion regarding the legality of force used in self-defence.¹⁰⁶¹ When is it legal? Is the anticipatory use of force legitimate? Could it be counterproductive? These are just a few of the questions which have been debated by scholars. Conceptual clarity would help offset this issue. Thus, the following sections will briefly explain relevant terminology to reduce the ambiguity surrounding this topic considerably.

Unmanned Aerial Vehicle

By definition, an Unmanned Aerial Vehicle (UAV), often commonly referred to as a drone, is a remotely piloted aircraft.¹⁰⁶² Kerbing the need for a pilot in the cockpit has increased asymmetry and enabled many military operations to be carried out from afar.¹⁰⁶³ Countless surveillance operations rely on such technology, but many of these successes have been overshadowed by consequences often attributed to lethal drone (mis)use.¹⁰⁶⁴ Therefore, this high-risk weaponry's strategic efficacy merits further examination and scrutinization¹⁰⁶⁵ when used in pre-attack self-defence cases. As the following concepts will demonstrate, ambiguity and contention have

¹⁰⁶¹ See Dinstein, *War, Aggression and Self-Defence*, p.172 (which discusses the concept of 'interceptive self-defence'); see also Greenwood, 'International Law and the Preemptive Use of Force: Afghanistan, al Qaida, and Iraq' (describing the issues which arise from vague terminology); see also Matthew Waxman, 'The Use of Force Against States the Might Have Weapons of Mass Destruction,' *Michigan Journal of International Law*, 2009 (discusses 'precautionary self-defence').

¹⁰⁶² Markus Wagner, 'Unmanned Aerial Vehicles,' from the *Max Planck Encyclopaedia of Public International Law*, Oxford University Press, 2015, p. 1.

¹⁰⁶³ Thazha Paul, *Asymmetric Conflicts: War Initiation by Weaker Powers* (NY: Cambridge University Press, 1994); see also Robert Tomes, 'Relearning Counterinsurgency Warfare,' *Army War College*, Parameters 34/1, Fall 2004, pp. 16-28.

¹⁰⁶⁴ United Nations, 'Delegates Consider Deadly Use of Drone Technology as Third Committee Hears More Presentations by Experts on Human Rights Obligations,' *UN Sixty-eighth General Assembly*, Third Committee, 25 October 2013.

¹⁰⁶⁵ See Vivek Sehrawat, 'Legal Status of Drones Under LOAC and International Law,' *Penn State Journal of Law & International Affairs*, Volume 5, Issue 1 War in the 21st Century and Collected Works, April 2017 (Particularly since the use of military drones is a high-risk practice which has resulted in high numbers of civilian casualties—leading to international outrage stemming from its 'violation of just war principles and international law').

contributed to divergent opinions regarding the delineation of the ‘battlefield’ and the identity of the ‘combatant.’

Battlefield v. Battlespace

The traditional legal understanding of the battlefield focuses on the geographic space within which armed conflict occurs.¹⁰⁶⁶ International law views the battlefield as a physical space—governed by laws specific to that location, time or event.¹⁰⁶⁷ The traditional understanding of war, and by extension, the battlefield, relies on two key assumptions. First, those occupying the battlefield's space are combatants, and second, there is direct engagement and relationship between belligerents.¹⁰⁶⁸ This current legal definition of the battlefield is outdated and insufficient at addressing terror groups' evolving nature. As a result, many states have taken it upon themselves to infer this definition's applicability to modern armed conflicts.

Following the 9/11 attacks in New York, US President George W. Bush declared that ‘the entire world is [now] a battlefield.’¹⁰⁶⁹ This remark was made about the enemy's evolving nature, which has resulted in an inherently complex ‘theatre of engagement’ due to this modern battlefield's borderless nature.¹⁰⁷⁰ Later, Vice-President Dick Cheney echoed the same sentiment when he declared that ‘the only way you can deal with them is to destroy them. The reach of our

¹⁰⁶⁶ Fred Aja Agwu, ‘Drones, Vanishing Frontlines, and the Emergence of ‘Battlespace,’ from *Armed Drones and Globalization in the Asymmetric War on Terror: Challenges for the Law of Armed Conflict and Global Political Economy*, (Routledge Research in the Law of Armed Conflict: New York, 2018) p. 191.

¹⁰⁶⁷ Klem Ryan, ‘What’s Wrong with Drones? The Battlefield in International Humanitarian Law,’ from *The American Way of Bombing: Changing Ethical and Legal Norms, from Flying Fortresses to Drones*, (Cornell University Press: New York, 2014), p. 211; see also Carl Schmitt, ‘The Nomos of the Earth in the International Law of the Jus Publicum Europaeum,’ *Telos Press*, (2006), p. 74 (Schmitt has written extensively on how International Humanitarian Law and the theories/principles of Just War have led to the development of our modern laws of armed conflict.)

¹⁰⁶⁸ Ryan, ‘What’s Wrong with Drones? The Battlefield in International Humanitarian Law,’ p. 213.

¹⁰⁶⁹ Robert D. Sloan, ‘New Battlefields/Old Laws: Shaping a Legal Environment for Counterinsurgency,’ *Proceedings of the Annual Meetings of the American Society of International Law*, Vol. 105, 2011, p. 372.

¹⁰⁷⁰ Agwu, ‘Drones, Vanishing Frontlines, and the Emergence of ‘Battlespace,’ p. 191.

efforts must be as broad and deep as the tentacles of the terrorist networks.’¹⁰⁷¹ Drones lead the charge in terms of technological advancements in military strategy, and it is because of these developments, the proverbial limits on the battlefield are dissolving. Based on drone strike reports and information garnered from intelligence documents, drones ‘have significantly shaped how the United States defines and targets its enemies.’¹⁰⁷²

Unlike conventional wars, the war on terror must now navigate (and address) the ‘shifty nature’ of frontlines occupied by civilian forces.¹⁰⁷³ Even in Pakistan’s Federally Administered Tribal Areas (FATA), which is internationally recognized as the core of the war on terror, ‘the US is fighting against a diffused group that cannot easily be identified from the civilian population.’¹⁰⁷⁴ This shift undoubtedly means that the ‘global battlefield’ will overlap with civilian space.

Markus Wagner, a Professor of Law at the University of Miami, noted that this intertwining of civilian and combatant spaces would result in a ‘battlespace.’¹⁰⁷⁵ It is conceptually different from a battlefield or frontline because this arena is known to be occupied by civilians. International law is very much focused on territory and boundaries—especially those which delineate between civilian and armed conflict zones. Since an area cannot be referred to as a battlefield if civilians also occupy the zone in question, the ‘battlespace’ concept was developed.¹⁰⁷⁶

International law formally defined ‘battlespace’ as an area in which ‘armed forces of the adverse parties actually engaged in combat, and those directly supporting them, are located.’¹⁰⁷⁷

¹⁰⁷¹ William C. Banks, ‘The Predator,’ from Volker C. Franke’s *Terrorism and Peacekeeping: New Security Challenges*, ABC-CLIO, 2005, p. 152.

¹⁰⁷² Ryan, ‘What’s Wrong with Drones? The Battlefield in International Humanitarian Law,’ pp. 215-216.

¹⁰⁷³ Agwu, ‘Drones, Vanishing Frontlines, and the Emergence of ‘Battlespace,’ p. 196.

¹⁰⁷⁴ Warraich, ‘The Use of Drones: Legal Grey Area?’ pp. 74-75.

¹⁰⁷⁵ Markus Wagner, ‘Beyond the Drone Debate: Autonomy in Tomorrow’s Battlespace,’ *Proceedings of the Annual Meetings of the American Society of International Law*, Vol. 106, 28 February 2017, pp. 81-82.

¹⁰⁷⁶ Agwu, ‘Drones, Vanishing Frontlines, and the Emergence of ‘Battlespace,’ p. 196.

¹⁰⁷⁷ Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, ‘Commentary on the Additional Protocols,’ *International Committee of the Red Cross*, 08 June 1987, p. 263.

The following developments were made: Article 19 of the third Geneva Convention,¹⁰⁷⁸ Article 14 of the fourth Geneva Convention,¹⁰⁷⁹ and Article 15 of the 1977 Additional Protocols.¹⁰⁸⁰ Additionally, the Geneva Conventions and Articles 57 and 58 of Protocol I (1977) have safeguards put in place to prevent ‘civilian contaminations of the battlefield or frontlines and the attendant high level of civilian casualties.’¹⁰⁸¹

However, international law fails to account for the omnipresent nature of terrorism—wherein any civilian area might become, by legal standards, a battlefield (as terror attacks are taking place without concern for state boundaries). Nevertheless, these legal amendments demonstrate that international law has assumed responsibility in limiting war by developing articles that focus on separating civilians from armed conflict areas.¹⁰⁸² Despite this progress, there is no international legal task force entrusted with monitoring and governing the war on terror—allowing for this legal ambiguity to continue.¹⁰⁸³

Combatant

Lacking a clear definition of the battlefield in international law creates an even bigger problem for the combatant concept. In conventional wars, wherein belligerents occupied a physical battlefield, Article 50 of the additional protocols was sufficient to ascertain (i) who the combatants were, (ii) how one might engage them, and (iii) where the parameters of the ‘battlefield’ stood. However, the current nature of the US’s ‘war on terror’ changes this traditional understanding of the battlefield, and by extension, the combatant.

¹⁰⁷⁸ Requires that the captured enemy fighters be removed from the active ‘combat zone’ to protect them from danger; see also ICRC, *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, <http://www.icrc.org/ihl/INTRO/375>.

¹⁰⁷⁹ Allows ‘safety zones’ and ‘neutralized zones’ to be established which are separate from conflict areas like the frontline; see also Pictet, *Commentary on the IV Geneva Convention*, pp. 120–21.

¹⁰⁸⁰ Requires the occupying power in a territory, which was formally under enemy control, to offer humanitarian assistance to regions occupied by civilians which have become relatively stable; see also Sandoz, Swinarski, and Zimmermann, ‘Commentary on the Additional Protocols,’ p. 192.

¹⁰⁸¹ Agwu, ‘Drones, Vanishing Frontlines, and the Emergence of ‘Battlespace,’ p. 196.

¹⁰⁸² Ryan, ‘What’s Wrong with Drones? The Battlefield in International Humanitarian Law,’ pp. 212–214.

¹⁰⁸³ Agwu, ‘Drones, Vanishing Frontlines, and the Emergence of ‘Battlespace,’ p. 204.

A 2011 UK Ministry of Defence (MoD) paper discussed the issues that develop due to an imprecise definition of the 'battlefield.' The MoD was concerned with the potential reciprocal behaviour between combatants outside of the traditional conception of the battlefield.¹⁰⁸⁴ Questions like: is a 'Reaper operator walking the streets of his hometown after a shift a legitimate target as a combatant? Would an attack by a Taliban sympathizer be an act of war under international law and murder under the statutes of the home state?'¹⁰⁸⁵ These are some of the issues caused by vague or improperly addressed legal concepts and terminology in modern war.

Under the Bush Administration, military drones only targeted High-Value Targets (HVTs). Under Obama, this programme was expanded, which subsequently broadened the understanding of 'militant.'¹⁰⁸⁶ According to reports, this increased signature strike operations.¹⁰⁸⁷ It suggests that the 'identity of those targeted is not known, but their actions or characteristics (their signature) suggests that they are 'hostile' to the United States.'¹⁰⁸⁸ With the development of the 'global war on terror,' the combatant's identity has degraded under international law.¹⁰⁸⁹

Unsurprisingly, the United States 'counts all military-age males in a strike zone as combatants...unless there is explicit intelligence posthumously proving them innocent.'¹⁰⁹⁰ Disturbingly, it seems as though 'estimates of extremely low or no civilian casualties appear to be based on...the presumption that, unless proven otherwise, individuals killed in these strikes are militants.'¹⁰⁹¹

¹⁰⁸⁴ Ryan, 'What's Wrong with Drones? The Battlefield in International Humanitarian Law,' p. 216.

¹⁰⁸⁵ UK Ministry of Defence, 'The UK Approach to Unmanned Aircraft Systems,' JDN 2/11, UK *Ministry of Defence*, 2011, p. 55.

¹⁰⁸⁶ Jonathan S. Landay, 'Obama's Drone War Kills 'Others,' Not Just al Qaida Leaders,' *McClatchy Newspapers*, 13 April 2013.

¹⁰⁸⁷ Becker and Shane, 'Secret 'Kill List' Proves a Test of Obama's Principles and Will.'

¹⁰⁸⁸ Ryan, 'What's Wrong with Drones? The Battlefield in International Humanitarian Law,' p. 215; see also Becker and Shane, 'Secret 'Kill List' Proves a Test of Obama's Principles and Will.'

¹⁰⁸⁹ Ryan, 'What's Wrong with Drones? The Battlefield in International Humanitarian Law,' p. 216.

¹⁰⁹⁰ Becker and Shane, 'Secret 'Kill List' Proves a Test of Obama's Principles and Will.'

¹⁰⁹¹ Keene, 'Lethal and Legal? The Ethics of Drone Strikes,' p. 18.

The US understanding of who constitutes a ‘civilian’ contradicts principles commonly understood under international law. Still, it does not go so far as to violate said law since a lack of clear definitional parameters at the international level have allowed such problematic interpretations to persist. As expected, this ambiguity has granted intelligence agencies a higher degree of operational freedom.

Customary international requires that combatants be aware of their position on the battlefield. However, drones do not afford this consideration. By covert surveillance and remote killing, combatants are not aware of when and how they are being monitored or targeted. By this consideration, the battlefield becomes distorted and malleable.¹⁰⁹² These irregularities have even allowed US military lawyers to take advantage of the law.

Leaked classified documents discussed a somewhat troubling event that took place in 2007. During an air mission in Iraq, two insurgents were attempting to surrender to an Apache helicopter. Before any action being taken, the crew consulted a military lawyer who advised that the insurgents ‘cannot surrender to aircraft and are still valid targets.’¹⁰⁹³ As a result, both insurgents were shot dead. The issue here is legality. International law dictates that an act of surrender must be recognized and accepted. In the strongest terms, it also indicates that a distinction should be made between civilians and combatants. Unfortunately, as many cases have shown—US counter-terrorism air operations are not as discerning as they may claim to be.

¹⁰⁹² Ryan, ‘What’s Wrong with Drones? The Battlefield in International Humanitarian Law,’ p. 216.

¹⁰⁹³ See David Leigh, ‘Iraq War Logs: Apache Crew Killed Insurgents Who Tried to Surrender,’ *The Guardian*, 22 October 2010.

Bibliography

- Abbasi, Ameer Ali. 'Politics of Exclusion through Language in the Presidential Speeches of Donald Trump,' *SSRN*, 01 October 2019.
- Abdo, Geneive. *The New Sectarianism: The Arab Uprisings and the Rebirth of the Shi'a-Sunni Divide* (Oxford: Oxford University Press, 2017).
- Abdul-Hussain, Hussain. 'Hezbollah: A State Within a State,' *Current Trends in Islamist Ideology* 8, (2009), pp. 68-81.
- Abdul-Zahra, Qassim and Zeina Karam. 'Iran Vows Revenge for U.S. Attack That Killed Powerful General,' *Associated Press*, 03 January 2020.
- Abé, Nicola. 'Dreams in the Infrared: The Woes of an American Drone Operator,' *Spiegel Online International*, 14 December 2012.
- Abedi, Maham. 'Soleimani Killing: A Look at the Trump Administration's Evolving Explanations,' *Global News Toronto*, 13 January 2020.
- Abelson, Donald E. *Capitol idea: Think tanks and US foreign policy* (Toronto: McGill-Queen's Press-MQUP, 2006).
- Ackerman, Andrew. 'U.S. Officials Defend Decision to Kill Iranian General,' *The Wall Street Journal*, 12 January 2020 <<https://www.wsj.com/articles/u-s-officials-defend-decision-to-kill-iranian-general-11578860871>>.
- Ackerman, Gary and Michelle Jacome. 'WMD terrorism,' *Prism* 7.3 (2018), pp. 22-37.
- Ackerman, Gary, Douglas Clifford, and Victor Asal. *How Might Great Power Competition and Regional Dynamics Change Following the Targeted Killing of Qassam Soleimani*, (New York: University of Albany Press, 2020).
- Adesnik, David, H.R. McMaster, and Behnam Ben Taleblu, 'Burning Bridge: The Iranian Land Corridor to the Mediterranean,' *Foundation for Defence of Democracies*, 18 June 2019.
- Afzal, Madiha. 'Around the Halls: Experts React to the Killing of Iranian Commander Qassem Soleimani,' *Brookings Institution*, 03 January 2020.
- Agadjanian, Alexander and Yusaku Horiuchi. 'Has Trump Damaged the US Image Abroad? Decomposing the Effects of Policy Messages on Foreign Public Opinion,' *Journal of Political Behavior*, 27 October 2018, pp. 1-22.
- Agbada, Agbada S. 'Is the Killing of Qasem Soleimani by the United States of America Legal Under International Law,' *SSRN*, 07 January 2020.

- Agwu, Fred Aja. *United Nations System, State Practice and the Jurisprudence of the Use of Force* (New York: Malthouse Press, 2005).
- Agwu, Fred. *Drones in International Humanitarian Law, IHL, from Armed Drones and Globalization in the Asymmetric War on Terror: Challenges for the Law of Armed Conflict and Global Political Economy* (New York, Routledge, 2018), pp. 128-212.
- Ahmad, Muhammad Idrees. 'The Magical Realism of Body Counts: How Media Credulity and Flawed Statistics Sustain a Controversial Policy,' *Journalism* Vol.17, No.1 (2016), pp. 18-34.
- Akande, Dapo and Thomas Liefländer. 'Clarifying Necessity, Imminence, and Proportionality in the Law of Self-Defense,' *American Journal of International Law* Vol.107, No.3 (2013), pp. 563-570.
- Akbarzadeh, Shahram. 'Why Does Iran Need Hizbullah?' *The Muslim World* 106.1 (2016), pp. 127-140.
- Aksüt, Fahri. 'Timeline: U.S.-Iran Tension Since Collapse of Nuke Deal,' *Ankara Anadolu Agency*, 08 January 2020.
- Al Jazeera Staff. 'Iran Launches Missile Attacks on U.S. Facilities in Iraq,' *Al Jazeera*, 08 January 2020.
- Al Jazeera Staff. 'Iran Responds in Kind to Trump's IRGC "Terrorist" Designation,'" *Al Jazeera*, 08 April 2019.
- Al Jazeera Staff. 'U.S. Rejects Iraq Request to Discuss Troop Withdrawal, US-Iran Escalation,' *Al Jazeera News*, 10 January 2020.
- Al Jazeera Staff. 'U.S. Targeted Iranian Official in Yemen in Failed Strike,' *Al Jazeera*, 10 January 2020.
- Al Jazeera Staff. 'US and Iran: Tensions Keep Rising After Soleimani's Death,' *Al Jazeera*, 02 February 2020.
- Al Jazeera. 'Iran Launches Missile Attacks on U.S. facilities in Iraq,' *Al Jazeera*, 08 January 2020.
- Al Jazeera. 'Kill Him Silently: Mossad vs Khaled Meshaal: The Story Behind Mossad's Bungled Bid to Assassinate Hamas Leader Khaled Meshaal,' *Al Jazeera News*, 20 January 2013 <<https://www.aljazeera.com/programmes/aljazeeraworld/2013/01/201312210472621589.html>>.

- Al-Salhy, Suadad. 'Tracked, Targeted, Killed' Qassem Soleimani's Final Hours,' *Middle East Eye*, 04 January 2020.
- Alder, Murray Colin. *The Inherent Right of Self-Defence in International Law*, Vol. 19 (Springer Science & Business Media, 2012).
- Aldrich, Richard J. 'US–European Intelligence Co-operation on Counter-terrorism: Low Politics and Compulsion.' *The British Journal of Politics and International Relations* Vol.11, No.1 (2009), pp. 122-139.
- Aldrich, Richard J. *The Hidden Hand: Britain, America and Cold War Secret Intelligence*, John Murray, 2001: pp.1-733.
- Alemzadeh, Maryam. 'The Informal Roots of the IRGC and the Implications for Iranian Politics Today,' *Crown Center for Middle East Studies*, August 2019.
- Alexander, Samuel. 'Double-Tap Warfare: Should President Obama Be Investigated for War Crimes?' Vol.69 *Florida Law Review* 261 (2017).
- Alexandrov, Stanimir A. *Self-Defense Against the Use of Force in International Law*, Vol. 23. (Nijhoff: Martinus Nijhoff Publishers, 1996).
- Alfoneh, Ali. 'Esmail Qaani: The Next Revolutionary Guards QUDS Force Commander?' *American Enterprise Institute for Public Policy Research (AEI)*, Washington D.C., January 2012, pp. 1-11.
- Alfoneh, Ali. *Brigadier General Qassem Suleimani: A Biography*, (American Enterprise Institute, 2011).
- Alger, Jonathan R., et al. *The Role of Intelligence in Ending the War in Bosnia in 1995*. (Lexington: Lexington Books, 2014).
- Allison, Graham T. *Essence of Decision-making: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971).
- Alston, Philip. 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,' *United Nations General Assembly*, Fourteenth Session, 28 May 2010, p. 3.
- Alter, Karen J. 'The Contested Authority and Legitimacy of International Law: The State Strikes Back,' from *Christopher Daase and Nicole Dietelhoff eds. Beyond Anarchy: Rule and Authority in the International System* (London: 2018).
- Alvesson, Mats and Kaj Sköldberg. *Reflexive Methodology: New Vistas for Qualitative Research*, 2ed. (Thousand Oaks, CA: Sage Publications, 2009).

- American Law Institute. 'Restatement of the Law, The Foreign Relations Law of the United States' St. Paul Minnesota: *American Law Institute Publishers* (1987), Section 102.
- Aminzade, Ronald R., Jack A. Goldstone and Elizabeth J. Perry. 'Leadership Dynamics and Dynamics of Contention,' in Ronald R. Aminzade et al. eds., *Silence and Voice in the Study of Contentious Politics*, (New York: Cambridge University Press, 2001).
- Anderson, Ray R., Robert F. Seibert and Jon Wagner. *Politics and Change in the Middle East: Sources of Conflict and Accommodation*, 5th ed., (Upper Saddle River, NJ: Prentice-Hall, 1998), pp. 64-67
- Anderson, Sulome. 'Iran's Proxy Threat is the Real Problem Now,' *Foreign Policy Report*, 10 January 2020
- Andresen, Joshua. 'Putting Lethal Force on the Table: How Drones Change the Alternative Space of War and Counterterrorism,' *Harvard National Security Journal* Vol.8 No.1 (2017), pp. 426-47.
- Anghie, Antony, and Charles Hill. 'The Bush Administration Preemption Doctrine and The United Nations,' *Proceedings of The Annual Meeting American Society of International Law*, The American Society of International Law, 2004.
- Anssari, Mehrnusch and Benjamin Nußberger. 'Compilation of States' Reactions to U.S. and Iranian Uses of Force in Iraq in January 2020,' *Just Security*, 22 January 2020.
- Arab News Staff. 'Reaper Drone Launched from Qatar Fired Missile That Killed Soleimani,' *Arab News*, 05 January 2020.
- Aradau, Claudia and Jef Huysmans. 'Assembling Credibility: Knowledge, Method and Critique in Times of Post-Truth,' *Security Dialogue*, Vol. 50, Issue 1, 07 September 2018: pp. 40-58.
- Arango et al., Tim. 'Qassim Suleimani, Master of Iran's Intrigue, Built a Shiite Axis of Power in Mideast,' *New York Times*, 12 May 2020.
- Arend, Anthony C., and Robert J. Beck, *International Law and the Use of Force: Beyond the UN Charter Paradigm* (New York: Psychology Press, 1993).
- Arend, Anthony Clark. 'International Law and the Preemptive Use of Military Force,' *The Washington Quarterly*, Vol. 256, No.2 (2003), pp. 89-103.
- Arend, Anthony Clark. *International Law and the Use of Force* (London: Routledge, 2014).

- Argomaniz, Javier and Alberto Vidal-Diez. 'Examining Deterrence and Backlash Effects in Counter-Terrorism: The Case of Eta,' *Terrorism and Political Violence* Vol.27, No.1 (2015), pp. 160-181.
- Armour, Cherie and Jana Ross. 'The Health and Well-Being of Military Drone Operators and Intelligence Analysts: A Systematic Review,' *Military Psychology* Vol.29, No.2 (2017), pp. 83-98.
- Armstrong, F.H. *William Lyon Mackenzie, First Mayor of Toronto: A Study of a Critic in Power*, (Toronto: University of Toronto Press, 1967).
- Arquilla, John and David Ronfeldt. *Networks and Netwars: The Future of Terror, Crime, and Militancy* (San Bernadino: Rand Corporation, 2001).
- Art, Robert J. 'Bureaucratic Politics and American Foreign Policy: A Critique,' *Policy Sciences*, Vol. 4 (1973), pp. 467-487.
- Asada, Masahiko. 'Security Council Resolution 1540 to Combat WMD Terrorism: Effectiveness and Legitimacy in International Legislation,' *Journal of Conflict & Security Law* Vol.13, No.3 (2008), pp. 303-332.
- Atherton, Kelsey D. 'Trump Inherited the Drone War but Ditched Accountability,' *Foreign Policy*, 22 May 2020.
- Atwood, Kylie. 'State Department Security Officials Weren't Notified of Imminent Threats to U.S. Embassies,' CNN, 14 January 2020.
- Azmy, Baher. An insufficiently accountable presidency: some reflections on Jack Goldsmith's Power and Constraint.' *Case W. Res. J. Int'l L.* Vol.45, No.1 (2012), pp.23-45.
- Babbie, Earl. *The Practice of Social Research* (Belmont, CA: Thompson Wadsworth, 11 ed, 2007), p. 89.
- Bachleitner, Kathrin. 'Diplomacy with Memory: How the Past Is Employed for Future Foreign Policy,' *Foreign Policy Analysis*, Vol. 15, Issue 4, October 2019: pp. 492-508.
- Bachleitner, Kathrin. *Collective Memory in International Relations*, Oxford University Press, 2021: pp. 1-176.
- Badalič, Vasja. 'The War Against Vague Threats: The Redefinitions of Imminent Threat and Anticipatory Use of Force,' *Security Dialogue* (2020).
- Baer, Robert. *See No Evil: The True Story of a Ground Soldier in the CIA's War on Terrorism*, (New York: Crown Press, 2002).

- Bahnsen, John C. 'Charisma,' in Christopher Kolenda, ed., *Leadership: The Warrior's Art*, (Carlisle, Pa.: Army War College Foundational Press, 2001).
- Bainerman, Joel. *Inside the Covert Operations of the CIA & Israel's Mossad* (New York: SP Books, 1994).
- Baker et al., Peter. 'Seven Days in January: How Trump Pushed U.S. and Iran to the Brink of War,' *The New York Times*, 11 January 2020.
- Baker, Peter and Thomas Gibbons-Neff. 'Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again,' *The New York Times*, 12 January 2020.
- Bakircioglu, Onder. 'The Contours of the Right to Self-Defence: Is the Requirement of Imminence Merely a Translator for the Concept of Necessity?' *The Journal of Criminal Law* Vol.72, No.2 (2008), pp. 131-169.
- Bakircioglu, Onder. 'The Right to Self-Defence in National and International Law: The Role of the Imminence Requirement,' *Indiana International and Comparative Law Review* Vol. 19 (2009), pp. 1-5.
- Bakircioglu, Onder. *Self-Defence in International and Criminal Law: The Doctrine of Imminence* (Abingdon: Routledge, 2011), p. 196.
- Banerjea, Udit. 'Revolutionary Intelligence: The Expanding Intelligence Role of the Iranian Revolutionary Guards Corps,' *Journal of Strategic Security*, Vol. 8, No. 3 (2015), pp. 93-106.
- Banks, William C. 'The Predator,' from Volker C. Franke's *Terrorism and Peacekeeping: New Security Challenges*, ABC-CLIO, 2005, p. 152.
- Barakat, Sultan. 'Trump's Opportunism Could Plunge the Middle East into Turmoil,' *Al Jazeera*, 04 January 2020
- Barber, Rebecca J. 'The Proportionality Equation: Balancing Military Objectives with Civilian Lives in the Armed Conflict in Afghanistan,' *Journal of Conflict and Security Law*, Vol. 15, No.3 (2010), pp. 467–500.
- Barela, Steven J. 'The Question of Imminence: A Historical View on Anticipatory Attacks,' *Legitimacy and Drones, Investigating the Legality, Morality and Efficacy of UCAVs*. (London: Ashgate Publishing Ltd, 2015).
- Barela, Steven J. *Legitimacy and Drones: Investigating the Legality, Morality and Efficacy of UCAVs* (London: Routledge, 2016).

- Barker, Rodney. *Political Legitimacy and the State* (New York, Oxford University Press, 1990), p. 11.
- Barnes, Julien E. 'U.S. Launches Airstrikes on Iranian-backed Forces in Iraq and Syria,' *New York Times*, 29 December 2019.
- Barrinha, Andre and Luis Da Vinha. 'Dealing with Risk: Precision Strikes and Interventionism in the Obama Administration,' in Mike Aaronson et al. (ed) *Precision Strike Warfare and International Intervention: Strategic, Ethno-Legal and Decisional Implications*, (London: Routledge, 2014), p. 24.
- Barry, James A. 'Covert Action Can Be Just,' *Orbis*, Vol. 37, Issue 3, 1993: p. 386.
- Başkan, Birol. *Unsettling the Middle East: The Implications of the US Rhetoric and Action, Turkey and Qatar in the Tangled Geopolitics of the Middle East* (New York: Palgrave Pivot, 2016), pp. 15-31.
- Bazeley, Pat. 'The Evolution of a Project Involving an Integrated Analysis of Structured Qualitative and Quantitative Data: From N3 to NVivo,' *International Journal of Social Research Methodology* 5.3 (2002), pp. 229-243.
- BBC News Staff. 'Trump Revokes Obama Rule on Reporting Drone Strike Deaths,' *BBC News*, 07 March 2019.
- BBC Staff. 'UN Official Criticizes U.S. over Drone Attacks,' *BBC News*, 02 June 2010.
- BBC World News Staff. 'Iran Missile Attack: Did Tehran Intentionally Avoid U.S. Casualties?' *BBC World News*, 08 January 2020 < <https://www.bbc.com/news/world-middle-east-51042156>>.
- BBC. 'Trump Revokes Obama Rule on Reporting Drone Strike Deaths,' *BBC News US & Canada*, 07 March 2019.
- Beard, Jack M. 'America's New War on Terror: The Case for Self-Defense under International Law.' *Harvard Journal of Public Policy* Vol.25, No.1 (2001), pp. 559-79.
- Becker, Jo and Scott Shane. 'Secret 'Kill List' Proves a Test of Obama's Principles and Will,' *New York Times*, 29 May 2012.
- Beetham, David. 'In Defence of Legitimacy,' *Political Science Association*, Vol. 41, Issue 3, 01 September 1993: pp. 488-491.
- Behnke, Andreas. 'Drone Warfare and the Emergence of Spaces of Exception,' in *Law, Security and the State of Perpetual Emergency* (London: Palgrave Macmillan, 2020), pp. 37-65.

- Behraves, Maysam. 'A Crisis of Confidence Revisited: Iran-West Tensions and Mutual Demonization,' *Journal of Asian Politics & Policy*, Vol. 3, Issue 3 (2011), pp. 327-347.
- Behraves, Maysam. 'Qassem Soleimani's Assassination and Iran's Pledge of Severe Revenge,' *Inside Arabia*, (2020).
- Bentley, Michelle. 'Fetishized Data: Counterterrorism, Drone Warfare and Pilot Testimony,' *Critical Studies on Terrorism* Vol11, No.1 (2018), pp. 88-110.
- Bergen, Peter and Katherine Tiedemann. 'The Year of the Drone.' *New America Foundation* 24 (2010).
- Bergen, Peter L. *Manhunt: The Ten-Year Search for Bin Laden—from 9/11 to Abbottabad* (Toronto: Doubleday Press Canada, 2012).
- Bergen, Peter. 'Drone Wars: The Constitutional and Counter-Terrorism Implications of Targeted Killing,' *New America Foundation* (2013).
- Bernstein, Richard. 'American at the Hague Sits in Judgment of U.S,' *The New York Times*, 20 September 1985.
- Bertrand, Natasha and Daniel Lippman. "'I Never Did That': Haspel's Clapping for Trump Rankles Intel Veterans,' *Politico*, 05 February 2020.
- Besson, Samantha. 'Sovereignty, International Law and Democracy,' *European Journal of International Law*, Vol. 22, No.2, May 2011, pp. 373–387.
- Bethlehem, Daniel. 'Principles Relevant to the Scope of a State's Right of Self-Defence Against an Imminent or Actual Armed Attack by Non-State Actors,' *American Journal of International Law*, Vol.106, No. 4 (2017), pp. 2-8.
- Betts, Richard K. 'Striking First: A History of Thankfully Lost Opportunities,' *Ethics & International Affairs* Vol.17, No.1, (2003), pp. 17-24.
- Betts, Richard K. *Surprise Attack: Lessons for Defense Planning* (Washington: Brookings Institution Press, 2010).
- Bevir, Mark and R.A.W. Rhodes. 'Interpretivism and the Analysis of Traditions and Practices,' *Critical Policy Studies*, Vol. 6, Issue 2, 08 August 2012: pp. 201-208
- Bhatt, Vivek. *Constructing a Right to Counterterrorism: Law, Politics and the Security Council, Human Rights in Times of Transition* (London: Edward Elgar Publishing, 2020).
- Biegon, Rubrick and Tom F. A. Watts. 'When Ends Trump Means: Continuity Versus Change in US Counterterrorism Policy,' *Journal of Global Affairs*, Vol. 6, No.1 (2020), pp. 37-53.

- Biegon, Rubrick, and Tom FA Watts. 'When Ends Trump Means: Continuity versus Change in US Counterterrorism Policy,' *Global Affairs* Vol.6, No.1 (2020), pp. 37-53.
- BIJ Staff. 'Drone Warfare: Strikes in Pakistan,' *Bureau of Investigative Journalism*, January 2020.
- BIJ Staff. 'Over 160 Children Reported Among Drone Deaths,' *Bureau of Investigative Journalism*, 11 August 2011<<https://www.thebureauinvestigates.com/stories/2011-08-11/over-160-children-reported-among-drone-deaths>>.
- Binkaya, Ahmet Berk. 'Causes and Effects of the Assassination of Qasem Soleimani: A Political Perspective,' *The Copernicus Journal of Political Studies*, Vol.1 (2020), pp. 159-166.
- Bird, Kai. *The Good Spy: The Life and Death of Robert Ames* (New York: Broadway Books, 2015).
- Birdsall, Andrea. 'Drone Warfare in Counterterrorism and Normative Change: US Policy and the Politics of International Law,' *Global Society* Vol.32, No.3 (2018), pp. 241-262.
- Bjola, Corneliu. 'Legitimizing the Use of Force in International Politics: A Communicative Action Perspective,' *European Journal of International Relations* Vol.11, No.2 (2005), pp. 266-303.
- Black, Tyler J. 'Over Your Head, Under the Radar: An Examination of Changing Legislation, Aging Case Law, and Possible Solutions to the Domestic Police Drone Puzzle,' *Washington and Lee Law Review* Vol.70 (2013), pp. 1829-54.
- Blake, Aaron. 'Trump's 'Four Embassies' Claim Utterly Falls Apart,' *The Washington Post*, 13 January 2020.
- Blake, Aaron. 'When the United States and Qasem Soleimani Worked Together,' *Washington Post*, 03 January 2020.
- Blakeley, Ruth. 'Drones, State Terrorism and International Law,' *Critical Studies on Terrorism* Vol.11, No.2 (2018), pp. 321-341.
- Blight, James and Janet Lang. *Dark Beyond Darkness: The Cuban Missile Crisis as History, Warning and Catalyst* (New York: Rowman & Littlefield Publishers, 2017).
- Blockmans, Steven and Stefan Waizer. 'E3+3 Coercive Diplomacy Towards Iran: Do the Economic Sanctions Add Up?' *CEPS Policy Briefs*, 06 June 2013
- Bloomfield Jr. Lincoln P. 'The Legitimacy of Covert Action: Sorting Out the Moral Responsibilities,' *International Journal of Intelligence and Counterintelligence*, Vol. 4, Issue 4, 1990: pp. 525.

- Bolton, John, *The Room Where It Happened: A White House Memoir* (New York: Simon and Schuster, 2020).
- Bolton, John. *Surrender Is Not an Option*, (New York: Simon and Schuster, 2008).
- Boot, Max. 'A Few Good Men: Trump, the Generals, and the Corrosion of Civil-Military Relations,' *Foreign Affairs* Vol. 99 (2020), p. 172.
- Boothby, William H. *Weapons and the Law of Armed Conflict* (Oxford: Oxford University Press, 2016).
- Bordelon, Chris. 'The Illegality of the US Policy of Preemptive Self-Defense Under International Law,' *Chapman Law Review*, Vol.9 (2005), pp. 111-21.
- Boston, Roy. 'Humanists and The Rise of Post-Truth America,' *The Humanist*, 22 December 2015.
- Bothe, Michael 'Terrorism and the Legality of Pre-emptive Force,' *European Journal of International Law* Vol.14, No.2 (2003), pp. 227-240.
- Bowden, Mark. 'Comparing Trump's Assassination of Soleimani to Obama's Killing of bin Laden,' *The Boston Globe*, 09 January 2020.
- Bowen, Wyn Q. 'Deterrence and Asymmetry: Non-State Actors and Mass Casualty Terrorism,' *Contemporary Security Policy* Vol.25, No.1 (2004), pp. 54-70.
- Bowett, Derek W. 'The Use of Force for the Protection of Nationals Abroad,' in Antonio Cassese (ed), *The Current Legal Regulation of the Use of Force* (Leiden: Martinus Nijhoff, 1986).
- Bowett, Derek W. *Self-Defence in International Law* (Manchester: Manchester University Press, 1958), pp. 191-192.
- Bowett, Derek W. *Self-defence in International Law*, The Lawbook Exchange, Ltd., (2009).
- Boyle, Michael J. 'Is the U.S. Drone War Effective?' *Current History*, Vol.113, No.762, (2014) see also Jake Berlin, 'Unpopular but Effective? The Drone Strike Dilemma,' *Sigma: Journal of Political and International Studies* Vol.33, No.1 (2016), pp. 11-31.
- Boyle, Michael J. 'The Legal and Ethical Implications of Drone Warfare,' *The International Journal of Human Rights*, Vol.19, No.2 (2015), p. 119-29.
- Bradlee, Ben. *A Good Life* (New York: Simon and Schuster, 1996).
- Brandis, George. 'The Right of Self-Defence Against Imminent Armed Attack in International Law,' *The Australian Yearbook of International Law Online* 35.1 (2018), pp. 55-66.

- Braun, Megan and Daniel R. Brunstetter. 'Rethinking the Criterion for Assessing CIA-Targeted Killings: Drones, Proportionality and Jus ad Vim,' *Journal of Military Ethics* Vol.12, No.4 (2013), pp. 304-324.
- Brennan, John O. *The Ethics and Efficacy of the President's Counter-terrorism Strategy*, The Wilson Center, 30 April 2012.
- Brennan, John. 'Strengthening Our Security by Adhering to Our Values and Laws,' The White House, *Office of the Press Secretary*, 16, September 2011.
- Breuninger, Kevin. 'Mike Pompeo: We Don't Know Precisely When or Where Soleimani Planned to Attack,' *CNBC*, 10 January 2020.
- Brilmayer, Lea. *American Hegemony: Political Morality in a One-Superpower World* (New Haven: Yale University Press, 1996).
- Broad, William and Mark Mazzetti. 'Yet Another Photo of Site in Syria, Yet More Questions,' *New York Times*, 27 October 2007.
- Brooks, Rosa. 'Duck-Rabbits and Drones: Legal Indeterminacy in the War on Terror,' *Stanford Law and Policy Review* Vol.5 No.1 (2014), pp. 301-21.
- Brooks, Rosa. 'War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror,' *Georgetown Law Faculty Publications and Other Works*, 2004: pp. 675-761.
- Browne, Ryan. 'US Defense Secretary Pushes Back on Lawmakers Slamming Intel Briefing on Soleimani,' *CNN*, 08 January 2020.
- Brownlie, Ian. *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963).
- Brunnée, Jutta and Stephen J. Toope. 'Self-defence Against Non-State Actors: Are Powerful States Willing but Unable to Change International Law?' *International & Comparative Law Quarterly* Vol.67, No.2 (2018), pp. 263-286.
- Brunstetter Daniel R. and Arturo Jimenez-Bacardi. 'Clashing Over Drones: The Legal and Normative Gap Between the United States and the Human Rights Community,' *The International Journal of Human Rights* Vol.19, No.2 (2015), pp. 176-198.
- Buchanan, Allen and Robert O. Keohane, 'Toward a Drone Accountability Regime,' *Ethics & International Affairs* Vol.29, No.1 (2015), pp. 15-37.
- Buchanan, Allen. 'Political Legitimacy and Democracy,' *Ethics* Vol.112, No.4 (2002), pp. 689-719.

- Buergenthal, Thomas. 'Lawmaking by the ICJ and Other International Courts,' from *Proceedings of the ASIL Annual Meeting*, Vol. 103 (Cambridge: Cambridge University Press, 2009).
- Bumbrell, John. *The Bush Administration: U.S. Public Diplomacy an Iran*, (Durham University Press, 2007).
- Bunn, M. Elaine. 'Preemptive Action: When, How, and to What Effect?' *Strategic Forum*. No. 200, *National Defense University*, 2003.
- Burgelman, Robert A. *Strategy is Destiny: How Strategy-Making Shapes a Company's Future*, (New York, NY: The Free Press, 2002)
- Burns, J. F. 'U.N. Panel to Investigate Rise in Drone Strikes,' *New York Times*, 24 January 2013.
- Burns, James MacGregor. *Leadership*, (New York: Harper and Row, 1978), p. 20.
- Byers, Michael *War Law: Understanding International Law and Armed Conflict* (New York: Open Road Publishing, 2007).
- Byers, Michael. 'Jumping the Gun,' *London Review of Books* 24, No.11 (2002), pp. 3-5.
- Byers, Michael. 'Terrorism, the Use of Force and International Law After 11 September,' *International Relations* Vol.16, No.2 (2002), pp. 155-170.
- Byman, Daniel. 'Confronting Iran,' *Journal of Survival: Global Politics and Strategy*, Vol. 60, Issue 1, (2018), pp. 107-128.
- Byman, Daniel. 'Do Targeted Killings Work?' *Foreign Affairs*, Vol. 85, No. 2, (2006), pp. 102–104
- Byman, Daniel. 'How to Handle Hamas: The Perils of Ignoring Gaza's Leadership,' *Foreign Affairs*, Vol. 89, No. 5, (2010) pp. 45-62.
- Byman, Daniel. 'Why Drones Work: The Case for Washington's Weapon of Choice.' *Foreign Affairs* Vol.92 (2013), p. 32.
- Bzostek, Rachel. *Why Not Pre-empt? Security, Law, Norms and Anticipatory Military Activities*, (London: Routledge, 2016).
- Çali, Başak. 'On Interpretivism and International Law,' *European Journal of International Law*, Vol. 20, Issue 3, August 2009: pp. 805-822.
- C-Span. 'Representative Connolly Reaction to Iran Briefing,' *C-Span*, 08 January 2020<<https://www.c-span.org/video/?467940-2/representative-connolly-reaction-iran-briefing>>.

- C-Span. 'Senators Lee and Paul Reaction to Iran Briefing,' *C-SPAN*, 08 January 2020<<https://www.c-span.org/video/?467942-7/senators-lee-paul-reaction-iran-briefing&start=719>>.
- Cakir, M. 'Constructivist Approaches to Learning in Science and Their Implications for Science Pedagogy: A Literature Review,' *International Journal of Environmental & Science Education*, Vol. 3, Issue 4 (2008), pp. 193–206.
- Calhoun, Laurie. 'Targeted Killing and Drone Warfare,' Ch. 18 from *The Routledge Handbook of Critical Terrorism Studies* (London: Routledge, 2016), p. 412.
- Calhoun, Laurie. 'The Strange Case of Summary Execution by Predator Drone,' *Peace Review* Vol.15, No.2 (2003), pp. 209-214.
- Calhoun, Laurie. *We Kill Because We Can: From Soldiering to Assassination in the Drone Age*, Zed Books Ltd., 2015: pp. 1-416.
- Callahan, Christopher. 'When a Journalist is Kidnapped,' *American Journalism Review*, Vol.16, No.7 (1994), pp. 36-43.
- Callamard, Agnes. 'The Targeted Killing of General Soleimani: Its Lawfulness and Why it Matters,' *Reiss Center on Law and Security at New York University School of Law*, 08 January 2020.
- Carley, Kathleen M. A Theory of Group Stability, *American Sociological Review*, Vol. 56, No.3 (1991), pp. 331-354
- Carpenter, Charli. 'Assassination, Extrajudicial Execution or Targeted Killing—What's the Difference?' *Foreign Policy*, 10 January 2020.
- Carr, E. H. *The Twenty Years' Crisis 1919-1939: An Introduction to the Study of International Relations*, 2nd ed., (London: MacMillan, 1946), p. 10.
- Carroll, Glenn. 'Dynamics of Publisher Succession in Newspaper Organizations,' *Administrative Sciences Quarterly*, Vol. 29, No. 1 (1984) pp. 93–113.
- Carson, Austin. *Secret Wars: Covert Conflict in International Politics* (Princeton: Princeton University Press, 2018): pp. 250-325.
- Carson, Jennifer Varriale. 'Assessing the Effectiveness of High-Profile Targeted Killings in the "War on Terror,"' *Journal of Criminology and Public Policy*, Vol. 16, No.1, (2017).
- Carter, Erin Baggott. 'Diversionary Cheap Talk: Economic Conditions and US Foreign Policy Rhetoric, 1945-2010,' *International Interactions*, Vol. 46, No.2, (2020), pp. 163-198.

- Carter, John C. *The Burning of the Sir Robert Peel* (London: Thousand Islands, 2013).
- Caruso, Philip. 'Suleimani is Dead, But Diplomacy Shouldn't Be,' *Foreign Press*, 06 January 2020
- Carvin, Stephanie. 'The Trouble with Targeted Killing,' *Journal of Security Studies*, Vol. 21, No.3 (2012), pp. 529-555
- Casey-Maslen, Stuart. 'Pandora's Box? Drone Strikes Under Jus Ad Bellum, Jus in Bello, and International Human Rights Law,' *International Review of the Red Cross* Vol.94, No.886 (2012), pp. 597-625.
- Cassese, Antonio. 'The International Community's 'Legal' Response to Terrorism,' *International & Comparative Law Quarterly* Vol.38, No.3 (1989), pp. 589-608.
- Cavallaro, James, Stephan Sonnenberg, and Sarah Knuckey. 'Living Under Drones: Death, Injury and Trauma to Civilians from US Drone Practices in Pakistan,' *Stanford International Human Rights and Conflict Resolution Clinic and Global Justice Clinic* (Stanford: NYU School of Law, 2012).
- CBS. 'Defence Secretary Mark Esper on 'Face the Nation,' *CBS News*, 12 January 2020. <<https://www.cbsnews.com/news/transcript-mark-esper-on-face-the-nation-january-12-2019/>>.
- CBS. 'Rep. Adam Schiff on 'Face the Nation,' *CBS News*, 12 January 2020. <<https://www.cbsnews.com/news/transcript-rep-adam-schiff-on-face-the-nation-january-12-2019/>>.
- Centre européen Robert Schuman. 'World War I Casualties,' p. 1-13: <http://www.centre-robert-schuman.org/userfiles/files/REPERES%20-%20module%201-1-1%20-%20explanatory%20notes%20-%20World%20War%20I%20casualties%20-%20EN.pdf>
- Chainoglou, Kalliopi. 'Reconceptualising Self-Defence in International Law,' *King's Law Journal* Vol. 18, No.1 (2007), pp. 61-94.
- Chalifant, Morgan and Brett Samuels. 'Trump Says it Doesn't Matter If Soleimani Posed an Imminent Threat,' *The Hill*, 13 January 2020.
- Chandler, Katherine. *Unmanning: How Humans, Machines and Media Perform Drone Warfare* (New York: Rutgers University Press, 2020).

- Chappelle, et al., Wayne. 'An Analysis of Post-Traumatic Stress Symptoms in United States Air Force Drone Operators,' *Journal of Anxiety Disorders* Vol.28, No.5 (2014), pp. 480-487.
- Charles J. Dunlap Jr., 'Why Can't the Media be More Transparent About Drones?' *The Hill*, 21 March 2016.
- Chasdi, Richard J. 'Counterterror Failure: The Fadlallah Assassination Attempt,' *Strategic Studies Institute, US Army War College*, (2012), p. 308.
- Chasdi, Richard J. *Serenade of Suffering: A Portrait of Middle East Terrorism, 1968-1993*, (Lexington: Lexington Books, 1999).
- Chatterjee, Pratap. 'The CIA's Unaccountable Drone War Claims Another Casualty,' *The Guardian*, 07 November 2011.
- Chesney, Robert. 'Who May Be Killed? Anwar Al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force,' *Yearbook of International Humanitarian Law*, Vol. 13 (2010), pp. 3–60.
- Chesterman, Simon. 'Reforming the United Nations: Legitimacy, Effectiveness and Power After Iraq,' *SYBIL*, (2006), pp. 59.
- Chevalier-Watts, Juliet. 'A Rock and a Hard Place: Has the European Court of Human Rights Permitted Discrepancies to Evolve in their Scrutiny of Right to Life Cases?' *The International Journal of Human Rights* Vol.14, No.2 (2010), pp. 300-318.
- Chinoglou, Kalliopi. *Reconceptualizing the Law of Self-Defence*, (Brussels: Ant. N. Sakkoulas Publishing, 2008) pp. 334-335.
- Chulov, Martin. 'A Defining Moment in the Middle East: The Killing of Qassem Suleimani,' *The Guardian*, 03 January 2020.
- Churchill, Robert Paul. 'Drone Warfare: Ethical and Psychological Issues,' from *Unmanned Aerial Vehicles: Breakthroughs in Research and Practice* (IGI Global, 2019), pp. 452-468.
- Cillizza, Chris. 'Donald Trump's Post-Truth Campaign and What it Says About the Dismal State of US Politics,' *The Independent*, 10 May 2016.
- Claiborne, William. 'Shiite Group Issues New Threat,' *Washington Post*, 23 December 1983, p. 20
- Clarke, Richard A. 'Former Counter-terrorism Czar Richard Clarke: U.S. Drone Program Under Obama Got Out of Hand,' *Democracy Now*, 02 June 2014.

- Clarke, Richard A. *Interview with Democracy Now*, June 2014. Transcript: https://www.democracynow.org/2014/6/2/ex_counterterrorism_czar_richard_clarke_bus_h
- Clarke, Richard A. *Sting of the Drone* (New York: St. Martin's Press, 2015).
- Clavier, Sophie. 'Contrasting Perspectives on Preemptive Strike: The United States, France, and the War on Terror.' *Maine Law Review* Vol.58, No.2 (2006), pp. 566-86.
- Cleary, Zachary. 'Re-evaluating the Efficacy of Targeted Killing,' *The Illini Journal of International Security*, Vol.4, No.1 (2008) pp.1-20.
- Cloud et al., David S. 'Iran Fires Missiles at Two Bases Housing U.S. Forces in Iraq,' *Los Angeles Times*, 07 January 2020.
- CNBC Staff. 'Iran Condemns Trump as "Terrorist in a Suit" After Attack Threat,' *CNBC News*, 05 January 2020.
- CNN. 'Interview with Sen. Mike Lee (R-UT),' *CNN*, 12 January 2020<<http://transcripts.cnn.com/TRANSCRIPTS/2001/12/sotu.01.html>>.
- Cockburn, Patrick. *War in the Age of Trump: The Defeat of ISIS, the Fall of the Kurds, the Conflict with Iran* (London: Verso Press, 2020).
- Cohen, Zachary. 'Barr and Pompeo Shift Justification for Iran Strike From 'Imminent' Threat to Deterrence,' *CNN*, 14 January 2020 <<https://edition.cnn.com/2020/01/13/politics/pompeo-barr-soleimani-strike-iran-rationale/index.html>>.
- Cohen, Zachary. 'Skepticism Mounts Over Evidence of 'Imminent' Threat That Trump Says Justified the Soleimani Killing,' *CNN*, 06 January 2020
- Cohler, Sarah. 'Hezbollah: Analysis of Violence,' *American Diplomacy*, (2011).
- Coker, Christopher. 'Ethics, Drones, and Killer Robots,' *The Oxford Handbook of International Political Theory* (2018).
- Cole, David. 'How We Made Killing Easy,' *New York Review of Books*, 06 February 2013.
- Coles, Isabel. 'Tensions Rise in the Middle East After U.S. Killing of Iranian Military Leader,' *The Wall Street Journal*, 03 January 2020.
- Coles, T. J. *Britain's Secret Wars: How and Why the United Kingdom Sponsors Conflict Around the World* (London: Clairview Books, 2018).

- Coll, Steve. *Directorate S: The CIA and America's Secret Wars in Afghanistan and Pakistan* (New York: Penguin Books, 2019).
- Coll, Steve. *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001* (New York: Penguin, 2004).
- Common Dreams Staff. 'Admission of U.S. Drone Strikes Does Nothing to Justify Program's Legality,' ACLU, *Common Dreams*, 01 May 2012.
- Copeland, Miles. *The Game Player: the confessions of the CIA's original political operative*, (London: Aurum, 1989).
- Cordesman, Anthony H. 'Obama and U.S. Strategy in the Middle East: Looking Beyond Syria and ISIS,' *Center for Strategic and International Studies*, 23 June 2016.
- Cormac, Rory and Richard J. Aldrich. 'Grey is the New Black: Covert Action and Implausible Deniability,' *International Affairs*, Vol. 94, No.3 (2018), pp. 477–494
- Cormac, Rory. *Disrupt and Deny: Spies, Special Forces, and the Secret Pursuit of British Foreign Policy* (Oxford: Oxford University Press, 2018).
- Corn, Geoffrey S. and Chris Jenks. 'Soleimani and the Tactical Execution of Strategic Self-defence,' *Lawfare: International Law*, 24 January 2020.
- Cotta, Sergio. *Eléments d'une Phénoménologie de la Légitimité*, Institut International de Philosophie Politique, ed., L'Idée de Légitimité, (Press Universitaires de France, 1967).
- Cox, Douglas and Ramzi Kassem. 'Off the Record: The National Security Council, Drone Killings, and Historical Accountability,' *Yale Journal on Regulation* Vol.31, No.1 (2014), pp. 363-83.
- Cox, Stephen J. 'Confronting Threats Through Unconventional Means: Offensive Information Warfare as A Covert Alternative to Preemptive War,' *Houston Law Review* Vol.42, No.1 (2005), pp. 881-96.
- CR Staff. 'Killing Soleimani: A Tactical Lunge with Strategic Consequences,' *Control Risks Group*, 08 January 2020.
- Craft, Kelly. 'Letter to the President of the United Nations Security Council,' *United States Mission to the United Nations*, 08 January 2020. Accessed at <<https://assets.documentcloud.org/documents/6609717/Art-51-Letter.pdf>>.
- Crawford, Neta C. 'The Justice off Preemption and Preventive War Doctrines,' from *Just War Theory*, (Palgrave Macmillan, New York, 2005), pp. 25-49.

- Crenshaw, Martha. 'Terrorism, Strategies and Grand Strategies,' in Russell D. Howard, Reid L. Sawyer, and Natasha E. Bajema, eds., *Terrorism and Counter-terrorism: Understanding the New Security Environment, Readings and Interpretations*, 3rd ed., (New York: McGraw Hill, 2004), pp. 444-459.
- Crilly, Rhys. 'International Relations in the Age of Post-Truth Politics,' *Journal of International Affairs*, Vol. 94, Issue 2, March 2018: pp. 417–425.
- Crilly, Rob. 'White House Says Trump Used Iraq War Authorization to Kill Qassem Soleimani,' *Washington Examiner*, 03 January 2020.
- Cronin, Audrey Kurth. 'How al-Qaida Ends: The Decline and Demise of Terrorist Groups,' *International Security*, Vol. 31, No. 1, (2006), pp. 7-48.
- Cronin, Audrey Kurth. *Ending Terrorism: Lessons for Defeating al-Qaeda*, (London: Routledge, 2008), p. 27.
- Cronin, Bruce. 'The Paradox of Hegemony: America's Ambiguous Relationship with the United Nations,' *European Journal of International Relations* Vol.7, No.1 (2001), pp. 103-130.
- Crowley et al., Michael. 'U.S. Strike in Iraq Kills Qassim Suleimani, Commander of Iranian Forces,' *The New York Times*, 02 January 2020.
- Crumpton, Henry A. *The Art of Intelligence: Lessons from a Life in the CIA's Clandestine Service* (New York: Penguin Books, 2013).
- Cutler, Leonard. *President Obama's Counterterrorism Strategy in the War on Terror: An Assessment* (Berlin: Springer, 2017).
- D'Amato, Anthony. 'Israel's Air Strike Against the Osirak Reactor: A Retrospective,' *Temple International and Comparative Law Journal*, Vol. 10, No.1 (1996), pp. 259-264.
- Daalder, Ivo and James Steinberg. 'The Future of Pre-emption,' *American Interest*, Vol.1 No.2 (2005).
- Dahl, Robert. *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), Ch. 5.
- Dal Lago, Alessandro, and Salvatore Palidda. *Conflict, Security and the Reshaping of Society: The Civilization of War* (London: Taylor & Francis, 2010).
- Dale, Daniel. 'The Numbers Prove it: Trump's Obama Fixation is Getting Worse,' *CNN*, 04 November 2019.

- Darden, Jessica T. *Aiding and Abetting: U.S. Foreign Assistance and State Violence*, (Stanford: Stanford University Press, 2019).
- Daugherty, William J. *Executive Secrets: Covert Action and the Presidency*, University of Kentucky Press, 2006: pp. 12-32.
- David, Steven R. 'Fatal Choices: Israel's Policy of Targeted Killings,' *Mideast Security and Policy Studies*, No. 51 (2002), pp. 1–26.
- David, Steven R. 'Israel's Policy of Targeted Killings,' *Ethics and International Affairs*, Vol. 17, No. 1 (2003), pp. 120-38.
- Davies, Nicolas J. S. 'The Caroline Case and American Drone Strikes in Pakistan,' pp. 429-436.
- Davies, Graeme, Marcus Schulzke and Thomas Almond. 'Sheltering the President from Blame: Drone Strikes, Media Assessments and Heterogeneous Responsibility 2002–2014,' *The British Journal of Politics and International Relations* Vol.20, No.2 (2018), pp. 477-496.
- Davies, Nicolas J. S. 'The Caroline Case and American Drone Strikes in Pakistan,' *Peace Review*, Vol. 21, No. 4 (2009), pp. 429-436.
- Davies, Philip HJ, and Kristian C. Gustafson, eds. *Intelligence Elsewhere: Spies and Espionage Outside the Anglosphere* (Washington: Georgetown University Press, 2013).
- Davies, Philip HJ., 'Spies as Informants: Triangulation and the Interpretation of Elite Interview Data in the Study of the Intelligence and Security Services,' *Politics* Vol.21, No.1 (2001), 73-80.
- Davis, Mike. *Buda's Wagon: A Brief History of the Car Bomb* (New York: Verso, 2007).
- Dawson, Lorne L. *Crises of Charismatic Legitimacy and Violent Behavior in New Religious Movements* (Cambridge: Cambridge University Press, 2002).
- De Chamfort, Nicolas. *Mazimes et Pensées, Caractères et Anecdotes* (Paris: Garnier-Flammarion, 1975).
- De Goede, Marieke. 'The Politics of Preemption and The War on Terror in Europe,' *European Journal of International Relations* Vol.14, No.1 (2008), pp. 161-185.
- De Groof, Melanie. 'Death from the Sky: International Legal and Practical Issues on the Use of Armed Drones,' in A. Zavrsnik (ed.) *Drones and Unmanned Aerial Systems*, (Geneva: Springer, 2016).

- De Groot, Tom and Salvador Santino Regilme Jr. 'Drone Warfare and the Obama Administration's Path-Dependent Struggles on Human Rights and Counterterrorism,' *Interdisciplinary Political Studies* Vol.6, No.1 (2020), pp. 167-201.
- De Taillon, J. Paul. *Hijacking and Hostages: Government Response to Terrorism* (Westport, CT: Praeger, 2002).
- De Vattel, Emer. *Of the Mode of Terminating Disputes Between Nations*, Ch. XVIII, p. 334.
- De Vattel, Emer. *The Law of Nations*, Book II from the ed. by Joseph Chitty, (Philadelphia: Johnson & Co., 1883), Ch. IV, p. 50.
- Deeks, Ashley S. 'Taming the Doctrine of Preemption,' Chapter 29 from *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015).
- Deitelhoff, Nicole and Lisbeth Zimmermann. 'Norms under Challenge: Unpacking the Dynamics of Norm Robustness,' *Journal of Global Security Studies*, Vol. 4, Issue 1, January 2019: pp. 2-17.
- Demirjian, Karoun, Karen DeYoung, and Shane Harris. 'Trump's Team Offers Mixed Messages About Imminent Attack from Iran As Justification for Killing Soleimani,' *Washington Post*, 07 January 2020.
- Democracy Now Staff. 'U.S. Drone Kills 16-Year-Old Pakistani Boy Days After He Attends Anti-Drone Organizing Meeting,' *Democracy Now*, 07 November 2011<https://www.democracynow.org/2011/11/7/us_drone_kills_16_year_old>.
- Denzin, Norman K. 'On Elephants and Gold Standards,' *Qualitative Research*, Vol.10, No.2 (2010), pp. 269-272.
- Denzin, Norman K. and Yvonna Lincoln. *Handbook of Qualitative Research*, 4 ed. (Thousand Oaks, CA: Sage, 2011).
- Deutsch, Karl. 'The Commitment of National Legitimacy Symbols as a Verification Technique,' *The Journal of Conflict Resolution*, Vol.7, No.3 (1963), pp. 360-369.
- DeVore, Marc R. 'Reluctant Innovators? Inter-organizational Conflict and the USA's Route to Becoming a Drone Power,' *Small Wars & Insurgencies* Vol.31, No.4 (2020), pp. 701-729.
- DeVore, Marc R., Armin B. Stähli, and Ulrike Esther Franke. 'Dynamics of Insurgent Innovation: How Hezbollah and Other Non-State Actors Develop New Capabilities,' *Comparative Strategy* Vol.38, No.4, (2019), pp. 371-400.

- Deyoung, Karen, Paul Sonne, and Dan Lamothe. 'Iran Launches Ballistic Missiles at Bases Housing U.S. Military Personnel in Iraq,' *Washington Post*, 07 January 2020.
- Diaconu, Florin. 'Iranian Grand Strategy in The Greater Middle East, The IRGC And General Qassem Soleimani,' *International Scientific Conference Strategies XXI*, Carol I National Defence University Publishing House, 2017.
- Diaz, Tom, and Barbara Newman. *Lightning out of Lebanon: Hezbollah Terrorists on American Soil* (Calibro: Presidio Press, 2006).
- Dilanian, Ken and Courtney Kube. 'Airport Informants, Overhead Drones: How the U.S. Killed Soleimani,' *NBC News*, 10 January 2020.
- Dinstein, Yoram. *War, Aggression and Self-Defence* (Cambridge: Cambridge University Press, 2012).
- Dolan, Chris J. *In War We Trust: The Bush Doctrine and the Pursuit of Just War* (London: Routledge, 2018).
- Doty, Roxanne Lynn. 'Foreign Policy as Social Construction: A Post-Positivist Analysis of U.S. Counterinsurgency Policy in the Philippines,' *International Studies Quarterly*, Vol. 37, No. 3, September 1993: pp. 297-320.
- Downes, Alexander B. and Mary Lauren Lilley. 'Overt Peace, Covert War? Covert Intervention and the Democratic Peace,' *Journal of Security Studies*, Vol. 19, No.2, (2010), pp. 266-306.
- Downs George W. and Michael A. Jones. 'Reputation, Compliance, and International Law,' *The Journal of Legal Studies* Vol.31, No.1 (2002), S95-S114.
- Doyle, Michael W. *Striking First: Preemption and Prevention in International Conflict* (Princeton, NJ: Princeton University Press, 2008).
- Dragu, Tiberiu and Mattias Polborn. 'The Rule of Law in the Fight against Terrorism,' *American Journal of Political Science*, Vol. 58, No. 2, 2014: pp. 511-525.
- Drezner, Daniel W. 'Immature Leadership: Donald Trump and the American Presidency,' *International Affairs* Vol.96, No.2 (2020), pp. 383-400.
- Drezner, Daniel W. 'Why the Post-Truth Political Era Might be Around for a While,' *The Washington Post*, 16 June 2016.
- Drumbl, Mark A. 'Terrorist Crime, Taliban Guilt, Western Victims, and International Law,' *Denver Journal of International Law and Policy*, Vol.31, No.1 (2002), p. 69-82.

- Duffield, Mark. *Global Governance and the New Wars: The Merging of Development and Security* (London: Zed Books Ltd., 2014).
- Duggan, Aaron. 'Nex Ex Machina, Or Bringing It All Back Home: The Fallacy and Fantasy of Sacrificeless Warfare and Why It Will Never Work,' *Mythological Studies Journal* Vol.1, No.1 (2010).
- Duncombe, Constance. 'Twitter and Transformative Diplomacy: Social Media and Iran–US Relations,' *Oxford Journal of International Affairs*, Vol.93, No.3, (2017), pp. 545–562
- Dunlap Jr., Charles J. 'A Report Card on the Stimson Report Card,' *The Lawfare Institute* (2016).
- Dunlap, Jr., Charles J. 'Drones versus their Critics: A Victory for President Obama's War Powers Legacy,' *Small Wars Journal*, 15 October 2015.
- Dunoff, Jeffrey L. and Mark A. Pollack. *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, Cambridge University Press, 2012: pp. 321–344.
- Dunwoody, Philip and Kenneth Hammond. 'The Policy of Preemption and Its Consequences: Iraq and Beyond,' *Journal of Peace Psychology*, Vol.12., No.1 (2006), pp. 23–24.
- Dylan, Huw, David V. Gioe, and Michael S. Goodman. 'The Development of CIA Covert Action,' in *The CIA and the Pursuit of Security: History, Documents and Contexts*, (Edinburgh: Edinburgh University Press, 2020).
- Easton, David. *A System Analysis of Political Life* (New York: John Wiley, 1965).
- Eckert, Amy. *The Non-Intervention Legal Theory*, Vol. 7, No.1 (2001), pp. 49 – 58.
- Ehteshami, Anoushiravan, and Raymond A. Hinnebusch. *Syria and Iran: Middle Powers in a Penetrated Regional System* (London: Routledge, 2002).
- Eilstrup-Sangiovanni, Mette and Calvert Jones. 'Assessing the Dangers of Illicit Networks: Why al-Qaida May Be Less Threatening Than Many Think,' *International Security*, Vol. 33, No. 2, (Fall 2008), pp. 7–44
- El Husseini, Rola. 'Hezbollah and the Axis of Refusal: Hamas, Iran and Syria,' *Third World Quarterly* Vol.31, No.5 (2010), pp. 803–815.
- Ellington, Thomas C. "The Most Transparent Administration in History? An Assessment of Official Secrecy in the Obama Administration's First Term." *Public Integrity* Vol.15, No.2 (2013), pp. 133–148.

- Elshtain, Jean. *Just War Against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2008).
- Emmerson, Ben. 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism,' *Human Rights Council*, Twenty-fifth Session, Agenda Item 3, 10 March 2014, p. 11.
- Emmons, Alex. 'U.S. Strike on Iranian Commander in Yemen the Night of Suleimani's Assassination Killed the Wrong Man,' *The Intercept*, 10 January 2020.
- Enemark, Christian. 'Drones, Risk and Perpetual Force,' *Ethics and International Affairs*, Vol.28, No.3 (2014), pp. 365-81.
- Enemark, Christian. *Armed Drones and the Ethics of War* (London: Routledge, 2013), pp. 96.
- Engel, Richard. 'Former Drone Operator Says He's Haunted by His Part in More Than 1,600 Deaths,' *NBC News*, 06 June 2013.
- Engelhardt, T. 'Tomgram: Engelhardt, Washington's Wedding Album from Hell,' *tomdispatch.com*, 20 December 2013.
- Espinoza, Michael. 'Trump and the GOP: A Marriage of Convenience?' *Political Insight* Vol. 9, No.4 (2018), pp. 22-26.
- Etim, Akpan Nse, and Nebeife Chigozie Joseph. 'After Soleimani: Iran's Proxy Networks and Its Implications for Stability in the Persian Gulf,' *Interdisciplinary Journal of African & Asian Studies*, Vol.6, No.2, (2020).
- Falk, Richard A. 'What Future for the UN Charter System of War Prevention?' *The American Journal of International Law* Vol.97, No.3 (2003), pp. 590-598.
- Farrow, Alexander. 'Drone Warfare as a Military Instrument of Counter-terrorism Strategy,' *Air & Space Power Journal* (2016), p. 8.
- Fassihi, Farnaz. 'Iran Says It Unintentionally Shot Down Ukrainian Airliner,' *New York Times*, 10 January 2020.
- Fazal, Tanisha M. 'Plausible Legality: Legal Culture and Political Imperative in the Global War on Terror,' *Perspectives on Politics* Vol.17, No.2 (2019), pp. 498-499.
- Feder, Norman Menachem. 'Reading the UN Charter Connotatively: Toward a New Definition of Armed Attack,' *New York University Journal of International Law and Policy*, Vol.19, No.1 (1986), pp. 395-433.
- Filkins, Dexter. 'The Shadow Commander,' *The New Yorker*, 23 September 2013.

- Finkel, Gal Perl. 'The Killing of Soleimani and the Deal of the Century,' *The Jerusalem Post*, 16 February 2020.
- Finkelstein et al., Claire. *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford: Oxford University Press, 2012).
- Finkelstein, Claire, Jens David Ohlin, and Andrew Altman. *Targeted Killings: Law and Morality in an Asymmetrical World* (Oxford: Oxford University Press, 2012).
- Finnegan, Conor and Adia Robinson. 'World is Safer because of Iranian Commander's Death: Secretary of State Mike Pompeo,' *ABC News*, 05 January 2020.
- Fisher, Anthony L. 'Trump's Lifelong Devotion to Cronyism is Getting People Killed,' *Business Insider*, 14 May 2020.
- Fisher, Uri. 'Deterrence, Terrorism, and American Values,' *Homeland Security Affairs* Vol.3, No.1 (2007).
- Fisk et al., Kerstin. *Preventative Force: Drones, Targeted Killing and the Transformation of Contemporary Warfare*, (New York: NYU Press, 2016), p. 121.
- Fisk, Kerstin, Jennifer L. Merolla and Jennifer M. Ramos. 'Emotions, Terrorist Threat, and Drones: Anger Drives Support for Drone Strikes,' *Journal of Conflict Resolution* Vol. 63, No.4 (2019), pp. 976-1000.
- Fleury, Eric A. 'Daring and Deliberation: Virtue, Rhetoric, and Diplomacy in Thucydides' Account of the Athenian Empire,' *Journal of International Political Theory*, Vol.16, No.3 (2018), pp.270-86.
- Flood, Allison. 'Post-truth named word of the year by Oxford Dictionaries,' *The Guardian*, 16 November 2016.
- Follath, Erich and Holger Stark. 'How Israel Destroyed Syria's Al Kibar Nuclear Reactor,' *Spiegel Online*, Fall 2009, pp. 22-26.
- Forsythe, David P. 'Democracy, War, and Covert Action,' Special Section on Democracy, War and Peace, *Sage Journals*, November 1992: pp. 385-395.
- Franck, Thomas M. *The Power of Legitimacy Among Nations*, (Oxford: Oxford University Press, 1990).
- Franck, Thomas. 'The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium,' *American Journal of International Law*, Vol.100, No.1 (2006), pp. 88-104.

- Franck, Thomas. *Recourse to Force: State Action Against Threats and Armed Attacks*, (Cambridge: Cambridge University Press, 2002), p. 107.
- Fraser, John. 'Validating a Measure of National Political Legitimacy,' *American Journal of Political Science*, Vol. 18, No. 1, 1974: pp. 117–134.
- Fredman, Jonathan M. 'Covert Action, Loss of Life, and Prohibition on Assassination,' *Studies in Intelligence* (1997), p. 23.
- Freedland, Jonathan. 'Post-Truth Politicians such as Donald Trump and Boris Johnson are No Joke,' *The Guardian*, 13 May 2016.
- Freedman, Lawrence. 'Prevention, Not Pre-emption,' *The Washington Quarterly*, Vol.26, No.2 (2003), pp. 105-114.
- Frey, Bruno S., and Simon Luechinger. 'How to Fight Terrorism: Alternatives to Deterrence,' *Defence and Peace Economics* Vol.14, No.4 (2003), pp. 237-249.
- Friedman, Leon. *The Law of War: A Documentary History*, Vol. 2, (London: Random House Publishing, 1972), pp. 1029, 1157-1159.
- Friedrich, Carl. *Man and His Government* (New York: McGraw Hill, 1963), Ch. 13.
- Fuller, Christopher J. *See It/Shoot it: The Secret History of the CIA's Lethal Drone Program*, (New Haven: Yale University Press, 2017).
- Gabrielsen, Iver. 'The Evolution of Hezbollah's Strategy and Military Performance, 1982–2006.' *Small Wars & Insurgencies* Vol.25, No.2, (2014), pp. 257-283.
- Gadarian, Shana Kushner. 'The Politics of Threat: How Terrorism News Shapes Foreign Policy Attitudes,' *Journal of Politics*, Vol. 72, No.2 (2008), pp. 469-483
- Gambill, Gary C., and Bassam Endrawos. 'Bin Laden's Network in Lebanon,' *Middle East Intelligence Bulletin*, Bd 3, (2001).
- Gamson, William A. and Andre Modigliani. 'Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach,' *American Journal of Sociology*, Vol. 95, No. 1, July 1989: pp. 1-37.
- Ganor, Boaz *The Counter-terrorism Puzzle* (New Brunswick, NJ: Transaction Books, 2005).
- Gardam, Judith Gail. 'Proportionality and Force in International Law,' *American Journal of International Law*, Vol. 87, No. 3 (1993), pp. 391-413.
- Gardbaum, Stephen A. 'Nature of Preemption,' *Cornell Law Review* Vol.79, No.1 (1993) p. 767-89.

- Garwood-Gowers, Andrew. 'Israel's Airstrike on Syria's Al-Kibar Facility: A Test Case for the Doctrine of Pre-emptive Self-Defence?' *Journal of Conflict & Security Law* Vol.16, No.2 (2011), pp. 263-291.
- Gasiorowski Mark J. and Malcolm Byrne. (ed.) *Mohammad Mosaddeq and the 1953 Coup in Iran* (Syracuse, NY: Syracuse University Press, 2004).
- Gause, Gregory F. 'The Illogic of Dual Containment,' *Journal of Foreign Affairs*, Vol. 73, No. 2, (1994), pp. 56-66.
- Geertz, Clifford. *The Interpretation of Cultures: Selected Essays* (New York: Basic Books Publishing, 1973).
- Gentry, John A. 'Intelligence Services and Special Operations Forces: Why Relationships Differ,' *International Journal of Intelligence and Counterintelligence* Vol.30 No.4 (2017), pp. 647-686.
- George, Roger Z. *Intelligence in the National Security Enterprise*, (Washington: Georgetown University Press, 2020).
- Georgy, Michael and Brian Thevenot. 'Informants in Iraq, Syria Helped U.S. Kill Iran's Soleimani: Report,' *Reuters*, 10 January 2020.
- Georgy, Michael. 'Inside the Plot by Iran's Soleimani to Attack U.S. Forces in Iraq,' *Reuters*, 03 January 2020.
- Germanos, Andrea. 'With New Niger Drone Base, Trump's CIA Poised for Expanded African Footprint': *NYT, Common Dreams*, 10 September 2018.
- Ghaddar, Hanin. 'Iran and Hezbollah in Syria: US Policy Options,' *The Washington Institute for Near East Policy* 27 (2018).
- Ghattas, Kim. *Black Wave: Saudi Arabia, Iran, and the Forty-Year Rivalry That Unraveled Culture, Religion, and Collective Memory in the Middle East*, (New York: Henry Holt, 2020).
- Gilbert, Ben. 'Iran's Military Knew It Accidentally Shot Down A Passenger Plane Moments After It Happened, And A Stunning New Report Details How It Was Covered Up-Even from Iran's President,' *Business Insider*, 26 January 2020.
- Gilboa, Eytan. 'Why Did the U.S. Kill Qassem Soleimani?' *Begin-Sadat Center for Strategic Studies* (2020), pp. 9-12.

- Gill Terry D. and Kinga Tibori Szabo. 'Twelve Key Questions on Self-Defence Against Non-State Actors—And Some Answers,' *Israel Yearbook on Human Rights*, Vol. 50, (Brill Nijhoff, 2020), pp. 167-205.
- Gill, Terry. 'When Does Self-Defence End?' from *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2016).
- Gilsinan, Kathy. 'It Wasn't the Law that Stopped Other Presidents from Killing Soleimani,' *The Atlantic*, 04 January 2020.
- Ginnane, Tara. 'Separation of Powers: Legitimacy, Not Liberty,' *Polity* Vol.53. No.1 (2020).
- Giroux, Henry A. *The Public in Peril: Trump and the Menace of American Authoritarianism*, (London: Routledge, 2017).
- Glennon, Michael J. 'The Fog of Law: Self-Defence, Inherence, and Incoherence in Article 51 of the United Nations Charter,' *Harvard Journal of Law and Public Policy*, Vol. 25, No.2 (2002), pp. 539-564.
- Goldman, Adam and Ellen Nakashima. 'CIA and Mossad Killed Senior Hezbollah Figure in Car Bombing,' *The Washington Post*, 30 January 2020.
- Goldsmith, Jack L. 'About,' from www.jackgoldsmith.org
- Goldsmith, Jack L. and Eric A. Posner. 'A Theory of Customary International Law,' *The University of Chicago Law Review*, Vol. 66, No.4 (1999), pp. 1113-1177.
- Goldsmith, Jack L. and Eric A. Posner. *The Limits of International Law*, (Michigan: Oxford University Press, 2005).
- Goldsmith, Jack L. and Stephen D. Krasner. 'The Limits of Idealism,' from *The Globalization of International Law*, Routledge, 2005.
- Goldsmith, Jack L. *Power and Constraint: The Accountable Presidency After 9/11*, (W.W. Norton, 2012).
- Goldsmith, Jack L. *The Terror Presidency: Law and Judgement Inside the Bush Administration*, (W.W. Norton, 2007), pp. 43-70, 99-140, 177-216.
- Gordon, Michael R. 'After the War: Preliminaries U.S. Air Raids in '02 Prepared for War in Iraq,' *New York Times*, 30 July 2003.
- Gordon, Michael R. 'Rocket Attack in Iraq Kills U.S. Contractor, Wounds Four U.S. Troops,' *The Wall Street Journal*, 28 December 2019.
- Gordon, Michael R. 'U.S. Ties Iran to Deadly Iraq Attack,' *The New York Times*, 02 July 2007.

- Gray, Christine, *International Law and the Use of Force* (Oxford: Oxford University Press, 2018).
- Gray, Colin S. *The Implications of Preemptive and Preventive War Doctrines: A Reconsideration*, (Carlisle: Army War Coll Strategic Studies Inst Carlisle Barracks PA, 2007).
- Green, James A. 'Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-defense,' *Cardozo Journal of International and Comparative Law*, Vol.14, No.1 (2006), pp. 429-49.
- Green, James A. 'The Ratione Temporis Elements of Self-Defence,' *Journal on the Use of Force and International law* Vol.2, No.1 (2015), pp. 97-118.
- Green, James A. *The International Court of Justice and Self-Defence in International Law* (London: Bloomsbury Publishing, 2009).
- Greenwald, Glenn. 'US Drone Strikes Target Rescuers in Pakistan—and the West Stays Silent,' *The Guardian*, 20 August 2012.
- Greenwood et al., Christopher. 'Principles of International Law on the Use of Force by States in Self-Defence,' working paper, *Royal Institute of International Affairs*, October 2005.
- Greenwood, Christopher. 'International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq,' *San Diego International Law Journal* Vol.4, No.1 (2003), pp. 7-27.
- Greenwood, Christopher. 'The Caroline,' in Max Planck Encyclopedia of Public International Law, *Oxford Journal of Public International Law*, April 2011.
- Gregory, Thomas. 'Drones and the Ethics of War,' in *The Routledge Handbook to Rethinking Ethics in International Relations* (2020).
- Gressang, Daniel S. 'Audience and Message: Assessing Terrorist WMD Potential,' *Terrorism and Political Violence* Vol.13, No.3 (2001), pp. 83-106.
- Grice, Francis and Scott N. Romaniuk. 'Norms, Norm Violations, and IR Theory,' *E-International Relations*, 15 November 2018.
- Griffin, Jennifer and Lucas Tomlinson. 'Quds Force Commander Soleimani Visited Moscow, Met Russian Leaders in Defiance of Sanctions,' *Fox News Archive*, 06 August 2015.
- Grimal, Francis. *Threats of Force: International Law and Strategy* (London: Routledge, 2013).
- Gross, Michael L. 'Assassination and Targeted Killing: Law Enforcement,' *Journal of Applied Philosophy*, Vol. 23, No. 3 (2006), pp. 323-335.
- Gross, Michael L. 'Killing Civilians Intentionally: Double Effect, Reprisal and Necessity in the Middle East,' *Political Science Quarterly*, Vol. 120, No.4 (2005), pp. 555–579.

- Großklaus, Mathias. 'Friction, Not Erosion: Assassination Norms at the Fault Line Between Sovereignty and Liberal Values,' *Contemporary Security Policy*, Vol. 38, Issue 2, 2017: p. 260.
- Grotius, Hugo. *On the Law of War and Peace, De Jure Belli ac Pacis* (trans A. C. Campbell, London, 1814), Book II, Ch. 1, V.
- Guelfi, Edward A., Buddhika Jayamaha, and Travis Robison. 'The Imperative for the US Military to Develop a Counter-UAS Strategy,' U.S. Air Force Academy, 2020.
- Guest, Greg, Emily E. Namey and Marilyn L. Mitchell. 'Qualitative Research: Defining and Designing,' in *Collecting Qualitative Data: A Field Manual for Applied Research* (London: Sage Publications, 2013).
- Guest, Greg, Kathleen M. MacQueen and Emily E. Namey. *Applied Thematic Analysis*, (Thousand Oaks, CA: Sage Publications, 2012).
- Guiora, Amos N. 'Targeted Killing: When Proportionality Gets All out of Proportion,' *Case Western Reserve Journal of International Law*, Vol. 45, No.1 (2012), pp. 235-252.
- Gusterson, Hugh. *Drone: Remote Control Warfare* (Cambridge: MIT Press, 2017).
- Guzman, Andrew T. *How International Law Works: A Rational Choice Theory* (Oxford: Oxford University Press, 2008).
- Haass, Richard N. 'Sovereignty: Existing Rights, Evolving Responsibilities, Remarks to the School of Foreign Service and the Mortara Center for International Studies, Georgetown University,' *U.S. Department of State*, Washington D.C., January 14, 2003.
- Haberman, Maggie. 'Trump Threatens Iranian Cultural Sites, and Warns of Sanctions on Iraq,' *New York Times*, 05 January 2020
- Hacohen, Gershon. 'Qassem Soleimani's Unique Strategic Significance,' *Begin-Sadat Center for Strategic Studies*, February 2020, p. 13.
- Hafez, Mohammed M. and Joseph M. Hatfield. 'Do Targeted Assassinations Work? A Multivariate Analysis of Israeli-Counter-Terrorism Effectiveness During Al-Aqsa Uprising,' *Studies in Conflict and Terrorism*, Vol. 29, No. 4 (2006) pp. 359-382.
- Hafezi, Parisa. 'Iran's Soleimani to Trump: We Are Near, Where You Can't Even Imagine,' *Reuters*, 26 July 2018.
- Hammond, Kenneth. *Human Judgement and Social Policy: Irreducible Uncertainty, Inevitable Error, Unavoidable Injustice*, (Oxford: Oxford University Press, 1996).

- Hamzeh, Ahmad Nizar. *In the Path of Hizbullah* (Syracuse University Press, 2004).
- Hannan, Jason. 'Trolling Ourselves to Death? Social Media and Post-Truth Politics,' *European Journal of Communication*, Vol. 33, Issue 2, 08 March 2018: pp. 214-226
- Harb, Mona, and Reinoud Leenders. 'Know Thy Enemy: Hizbullah, Terrorism and the Politics of Perception,' *Third World Quarterly* Vol.26, No.1 (2005), pp. 173-197.
- Harband, Mona and Lara Deeb. 'Culture as History and Landscape: Hizballah's Efforts to Shape an Islamic Milieu in Lebanon,' *The Arab Studies Journal*, Vol.19, No.1 (2011) pp. 10-41.
- Hardy, John. 'Counterterrorism: Altering International Norms in the Twenty-First Century,' *E-International Relations*, 26 August 2008.
- Harpootlian, Allegra. 'How the Presidency Seized Control of Drone Strikes,' *The Nation*, 14 January 2020.
- Harris, Shane, Josh Dawsey and Seung Min Kim. 'Trump Now Claims Four Embassies Were Under Threat from Iran, Raising Fresh Questions About Intelligence Reports,' *Washington Post*, 10 January 2020.
- Hashim, Ahmed S. *Iranian Ways of War: From Cyrus the Great to Qasem Soleimani* (London: Hurst, 2020).
- Hashim, Ahmed Salah. 'Iranian General's Killing: How Will Iran Respond?' *RSIS Commentaries*, Vol. 005, Issue 20, 2020.
- Hay, Colin. 'Interpreting Interpretivism Interpreting Interpretations: The New Hermeneutics of Public Administration,' *Journal of Public Administration*, Vol. 89, Issue 1, 16 March 2011: pp. 167-182.
- Haydar, As'ad. 'Al-Mustaqbal Interviews Shi'ite Leader Fadlallah,' *FBIS* Vol. 08 July 1985, from *Lebanon, Paris al-Mustaqbal*, 06 July 1985, p. G-3.
- Hays Parks, Colonel W. *Memorandum of Law*, DAJA-1A (27-1A) Washington, DC: Department of the Army, Office of the Judge Advocate General of the Army, 02 November 1989.
- Hechter, Michael. 'Legitimacy in the Modern World,' *American Behavioural Scientist*, Vol. 53, Issue 3, 12 October 2009: pp. 279-288.
- Heidekat, Jay P. 'Hezbollah's Resistance,' *Constructing the Past* Vol.11, No.1, (2010), pp. 10-21.
- Heller, Kevin Jon. 'One Hell of a Killing Machine: Signature Strikes and International Law,' *Journal of International Criminal Justice* Vol.1, No.1 (2013), pp. 89-119.

- Heller, Regina et. al. 'The 'Dark' Side of Normative Augmentation – The Case of Counterterrorism Policy,' from *Global Constitutionalism*, Vol. 1, Issue 2, Cambridge University Press, July 2012: pp. 278.-312.
- Hendrickson, David C. *Republic in Peril: American Empire and the Liberal Tradition* (Oxford: Oxford University Press, 2017), p. 65.
- Henkin et al., Louis. *International Law: Cases and Materials*, 3rd ed., (St. Paul, MA: West Publishing, 1993).
- Henkin, Louis. *How Nations Behave: Law and Foreign Policy* (Columbia University Press, 1979).
- Henkin, Louis. *International Law: Politics, Values and Functions* (Leiden: Martinus Nijhoff, 1990).
- Henkin, Louis. *Kosovo and The Law of Humanitarian Intervention*, Vol. 93, No 4 (1999), pp. 824-828.
- Henne, Peter S. 'Assessing the Impact of the Global War on Terrorism-on-Terrorism Threats in Muslim Countries,' *Terrorism and Political Violence* (2019), pp. 1-19.
- Hensel, Howard M., ed. *The Legitimate Use of Military Force: The Just War Tradition and the Customary Law of Armed Conflict* (London: Routledge, 2016).
- Hernández, Gleider I. 'Impartiality, bias, and the International Court of Justice,' *Cambridge Journal of International and Comparative Law* Vol.1, No.3 (2012), pp. 183-207.
- Herrington, Lewis, 'British Islamic extremist terrorism: the declining significance of Al-Qaeda and Pakistan,' *International Affairs* Vol.91, No.1 (2015), pp.17-35.
- Heyns et al., Christof. 'The International Law Framework Regulating the Use of Armed Drones,' *International and Comparative Law Quarterly* Vol.65, No.4 (2016), pp. 791-827.
- Hibbs, Douglas A. *Mass Political Violence: A Cross-National Causal Analysis*, (Wiley New York, 1973).
- Higgins, Rosalyn. *The Attitude of Western States Towards Legal Aspects of the Use of Force*, in Cassese, *The Current Legal Regulation of the Use of Force*, (Dordrecht: Martinus Nijhoff Publishers, 1986).
- Hijazi, et al., Alaa. 'Psychological Dimensions of Drone Warfare,' *Current Psychology* Vo.38, No.5 (2019), pp. 1285-1296.
- Hinnebusch, Raymond. 'The US Invasion of Iraq: Explanations and Implications,' *Critique: Critical Middle Eastern Studies* Vol.16, No.3 (2007), pp. 209-228.

- Hofmeister, Hannes Herbert. 'Neither the Caroline Formula nor the Bush Doctrine: An Alternative Framework to Assess the Legality of Preemptive Strikes,' *University of New England Law Journal* Vol. 32, No.2 (2005), pp.32-48.
- Holder Jr., Eric H. 'Attorney General Eric Holder Speaks at Northwestern University School of Law,' *The United States Department of Defence—Justice News*, 05 March 2012.
- Holton Judith A. and Isabelle Walsh. *Classic Grounded Theory: Applications with Qualitative and Quantitative Data* (New York: Sage, 2016).
- Horton, Scott. *Lords of Secrecy: The National Security Elite and America's Stealth Warfare* (New York: Nation Books, 2016).
- Hosmer, Stephen T. 'Operations Against Enemy Leaders,' *Rand Corporation*, 2001.
- Howley, Kevin. 'I Have a Drone: Internet Memes and the Politics of Culture,' *Interactions: Studies in Communication & Culture* Vol.7, No.2 (2016), pp. 155-175.
- Hudson et al., John. 'Killing of Soleimani Follows Long Push from Pompeo For Aggressive Action Against Iran, But Airstrike Brings Serious Risks,' *The Washington Post*, 05 January 2020.
- Hudson et al., John. 'On the Day U.S. Forces Killed Soleimani, They Targeted a Senior Iranian Official in Yemen,' *The Washington Post*, 10 January 2020.
- Hudson, John, Missy Ryan and Josh Dawsey. 'On the Day U.S. Forces Killed Soleimani, They Targeted A Senior Iranian Official in Yemen,' *The Washington Post*, 10 January 2020.
- Hulnick, Arthur S. 'US Covert Action: Does It Have A Future?' *International Journal of Intelligence and Counter-Intelligence* Vol.9, No.2, (1996), pp. 145-157.
- Humphreys, Edward. *Great Canadian Battles: Heroism and Courage Through the Years*, (Toronto: Arcturus, 2013), Ch. 5.
- Hunter, Thomas Byron. 'Targeted Killing: Self-defense, Pre-emption, and the War on Terrorism,' *Journal of Strategic Security*, Vol. 2, No. 2, 2009: pp. 1-52.
- Hurd, Ian. 'If I Had a Rocket Launcher: Self-Defense and Forever War in International Law,' *Houston Law Review*, Vol. 56, No.1 (2019) pp.821-39
- Hurd, Ian. 'Is Humanitarian Intervention Legal? The Rule of Law in an Incoherent World,' *Journal of Ethics & International Affairs*, Vol.25, No. 3 (2011), pp. 293-313
- Hurd, Ian. 'Legitimacy and Authority in International Politics,' *International Organization*, Vol. 53, No. 2 (1999), pp. 379–408.

- Hurd, Ian. 'Legitimacy and Authority in International Politics,' *Journal of International Organizations*, Vol. 53, Issue 2, Spring 1999: pp. 379-408.
- Hyder, Victor D. *Decapitation Operations: Criteria for Targeting Enemy Leadership*, (Fort Leavenworth, Kans.: School of Advanced Military Studies, 2004)
- I.C.J. 'Military and Paramilitary Activities in and Against Nicaragua,' *Nicaragua v. United States of America*, Merits, Judgements, *I.C.J. Reports* (1986).
- I.C.J. 'Oil Platforms (Iran v. U.S.),' Judgement, *ICJ Reports*, 2003, para 51.
- I.C.J. *Case Concerning Armed Activities on the Territory of the Congo (DRC v. Uganda)*, Judgement, ICJ Report 2005, para 148.
- I.C.J., 'Legality of the Threat or Use of Nuclear Weapons,' Advisory Opinion, 08 July 1996, *ICJ Reports*, 1996, paras 41-43.
- I.C.R.C. 'Advisory Service on International Humanitarian Law,' *International Committee for the Red Cross*, (July 2004), p. 2.
- I.C.R.C. 'Geneva Convention Relative to the Treatment of Prisoners of War:(Third Geneva Convention,' *ICRC Archives*, 12 August 1949.
- I.C.R.C. 'Practice Relating to Rule 47. Attacks Against Persons Hors de Combat, Section B: Specific Categories of Persons Hors de Combat,' *IHL Database*, (1977) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule47_sectionb>.
- I.C.R.C. 'Practice Relating to Rule 6. Civilians' Loss of Protection from Attack, Section A: Direct Participation in Hostilities,' *IHL Database*, (1949) <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule6_sectiona>.
- I.C.R.C. *Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, <http://www.icrc.org/ihl/INTRO/375>.
- I.H.L. Database. 'Customary International Law, Rule No. 65: Perfidy,' *International Committee of the Red Cross (ICRC)* <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule65>.
- International Military Tribunal (Nuremberg). 'Judgement and Sentences,' *American Journal of International Law*, (1947), pp. 172-205.
- Itzhakov, Doron. 'Dilemmas Facing the Revolutionary Regime Following the Elimination of Qassem Soleimani,' *Begin-Sadat Center for Strategic Studies*, 2020), p.15.
- Jaber, Hala. *Hezbollah: Born with a Vengeance* (New York: Columbia University Press, 1997).

- Jaffer, Jameel. *The Drone Memos: Targeted Killing, Secrecy and the Law* (New York: New Press, 2010).
- Jahanbani, Nakissa. 'Beyond Soleimani: Implications for Iran's Proxy Network in Iraq and Syria,' *Combating Terrorism Center at West Point*, 10 January 2020.
- Jahanbani, Nakissa. 'Reviewing Iran's Proxies by Region: A Look Toward the Middle East, South Asia, and Africa,' *Combating Terrorism Center at West Point*, Vol. 13, No.5 (2020).
- Jennings, R. Y. 'The Caroline and McLeod Cases,' *American Journal of International Law*, Vol. 32, No.1 (1938), pp. 82–99.
- Jervis, Robert. 'Getting to Yes with Iran: The Challenges of Coercive Diplomacy,' *Foreign Affairs*, Issue 105, January 2013
- Jervis, Robert. 'Understanding the Bush Doctrine: Preventive Wars and Regime Change,' *Political Science Quarterly* Vol.131, No.2 (2016), pp. 285-312.
- Jervis, Robert. 'Why Intelligence and Policymakers Clash,' *Political Science Quarterly*, Vol.125, No.2, (2010), pp. 185-204.
- Jervis, Robert. 'Why the Bush Doctrine Cannot Be Sustained,' *Political Science Quarterly*, Vol. 120, No.3 (2005), pp. 351-377.
- Jessup, Philip. *A Modern Law of Nations* (Hemden CT: Archon Books, 1968), p. 166.
- Jianming Shen, 'The Non-Intervention Principle and Humanitarian Interventions Under International Law,' *International legal theory*, Vol. 7, No.1 (2001), pp. 1-32.
- Johnsen, Gregory. 'US Military's Ambiguous Definition of a Legitimate Target,' *Sana'a Center for Strategic Studies* (2019).
- Johnson, James. 'Artificial Intelligence and Future Warfare: Implications for International Security,' *Defense & Security Analysis* Vol.35, No.2 (2019), pp. 147-169.
- Johnson, Loch K. 'On Drawing a Bright Line for Covert Operations,' *The American Journal of International Law*, Vol. 86, No. 2, April 1992: pp. 284-309.
- Johnson, Loch K. 'Reflections on the Ethics and Effectiveness of America's Third Option: Covert Action and U.S. Foreign Policy,' *Intelligence and National Security Journal*, Vol. 35, Issue 5, 16 March 2020: p. 669.
- Jordan, Jenna. 'Attacking the Leader, Missing the Mark: Why Terrorist Groups Survive Decapitation Strikes,' *International Security*, Vol. 38, No. 4 (2014) pp.7-38.

- Jordan, Jenna. 'When Heads Roll: Assessing the Effectiveness of Leadership Decapitation,' *Security Studies*, Vol. 18, No.1 (2009), pp. 719–755.
- Jordan, Jenna. *Leadership Decapitation: Strategic Targeting of Terrorist Organizations* (Stanford: Stanford University Press, 2019).
- Kader, Ariz. 'Iraq: Battleground or Buffer State?' *Barcelona Center for International Affairs*, July 2019: pp. 1-5.
- Kagan, Robert. 'America's Crisis of Legitimacy,' *Foreign Affairs* (2004), pp. 65-87.
- Kahana, Ephraim. 'Mossad-CIA Cooperation,' *International Journal of Intelligence and Counterintelligence* Vol.14, No.3 (2001), pp. 409-420.
- Kajtár, Gábor. 'The Caroline as the Joker of the Law of Self-Defence—A Ghost Ship's Message for the 21st Century,' *Austrian Review of International and European Law Online* Vol.21, No.1 (2019), pp. 1-25.
- Kaldor, Mary. *New and Old Wars: Organised Violence in a Global Era*, (New York: John Wiley & Sons, 2013).
- Kalyvas, Stathis N. "'New' and 'Old' Civil Wars: A Valid Distinction?" *World Politics* Vol.54, No.1 (2001), pp. 99-118.
- Kamieński, Łukasz. 'Toward Robotic Warfare,' in *The Future of US Warfare* (London: Routledge, 2017), pp. 192-207.
- Kammerhofer, Jörg. 'The Resilience of the Restrictive Rules on Self-Defence,' *The Oxford Handbook on the Use of Force in International Law* (Oxford: OUP, 2013).
- Kantor, Elisa. 'New Threats, Old Problems: Adhering to Brandenburg's Imminence Requirement in Terrorism Prosecutions,' *George Washington Law Review* Vol.76 (2007), pp. 752-74.
- Kaplan, Edward H., Alex Mintz, Shaul Mishal, and Claudio Samban. 'What Happened to Suicide Bombings in Israel? Insights from a Terror Stock Model,' *Studies in Conflict and Terrorism*, Vol. 28, No. 3 (2005), pp. 225–235
- Karlsrud, John. 'Towards UN Counter-Terrorism Operations?' *Third World Quarterly* Vol.38, No.6 (2017), pp. 1215-1231.
- Kasher, Asa and Amos Yadlin. 'Assassination and Preventive Killing,' *SAIS Review of International Affairs*, Vol. 25, No. 1, 2005: pp. 41-57.

- Katulis, Brian and Peter Juul. 'Putting Diplomacy First: A Strategic Alternative to President Donald Trump's 'Maximum Pressure' Approach on Iran,' *Center for American Progress*, 12 March 2020.
- Katz, Samuel M. *No Shadows in the Desert: Murder, Vengeance, and Espionage in the War Against ISIS* (New York: Hanover Square Press, 2020).
- Katzenstein, Peter J. *The Culture of National Security: Norms and Identity in World Politics*, New York: Columbia University Press, 1996: p. 5
- Kaufman, Brett Max. 'Trump is Unshackling America's Drones Thanks to Obama's Weakness,' *The Guardian*, 17 September 2018.
- Kazemzadeh, Masoud and Gabriel Emile Eid. 'An Analysis of the Assassination of the Lebanese Hezbollah Commander Imad Mughniyeh: Hypotheses and Consequences,' *Journal of American Foreign Policy Interests*, Vol. 30, No.6 (2008), pp. 399-413.
- Kazimi, Nibras. 'Qasem Soleimani: A Caesar Interrupted?' *Bustan: The Middle East Book Review* Vol.11, No.1 (2020), pp. 20-33.
- Kearley, Timothy. 'Regulation of Preventive and Preemptive Force in the United Nations Charter: A Search for Original Intent,' *Wyoming Law Review* Vol.3, No.1 (2003), pp. 663-74.
- Keene, Shima D. 'Lethal and Legal? The Ethics of Drone Strikes,' *Strategic Studies Institute and the U.S. Army War College Press*, 2015, p. 17.
- Kegley Jr., Charles W. *World Politics: Trends and Transformation*, 11th Ed., (Belmont, CA: Thomson Wadsworth, 2007).
- Kellogg, Davida. 'When Honour and Strategic Advantage Converge: A Jominian Argument for Abandoning Torture as a Tactic Intended to Contribute to Security in the Altered Strategic Landscape of Terror Warfare,' from *The War on Terror-Ethical Considerations*, Proceedings from the 7th Canadian Conference on Ethical Leadership, (Canadian Defence Academy Press, 2006).
- Kennedy, David and Leslie Brunetta. 'A Case Study: Lebanon and the Intelligence Community,' *Studies in Intelligence*, Vol. 37, No.5 (1994), pp. 42-45.
- Kenney, Michael. *From Pablo to Osama: Trafficking and Terrorist Networks, Government Bureaucracies, and Competitive Adaptation*, (University Park: Pennsylvania State University Press, 2007).

- Kessler, Oliver and Wouter Werner, 'Extrajudicial Killing as Risk Management,' *Security Dialogue*, Vol. 39, No.2 (2008), pp. 289-308
- Khader, Kareem. 'Iraq Parliament Speaker Says U.S. Strike Was "Flagrant Violation of Sovereignty,"' *CNN*, 03 January 2020.
- Kheel, Rebecca and Jordain Carney. 'Democrats 'Utterly Unpersuaded' by Evidence Behind Soleimani Strike,' *The Hill*, 08 January 2020.
- Kibbe, Jennifer D. 'Covert Action and The Pentagon,' *Intelligence and National Security* Vol.22, No.1, (2007), pp. 57-74.
- Kiely, Eugene. 'Trump Administration's Shifting Statements on Soleimani's Death,' *FactCheck.org*, 15 January 2020.
- Kilbourn, William. *The Firebrand: William Lyon Mackenzie and the Rebellion in Upper Canada*, (Toronto: Dundurn, 2008).
- Kilcullen, David. *Blood Year: The Unravelling of Western Counterterrorism* (Oxford: Oxford University Press, 2016).
- Kilcullen, David. *The Dragons and the Snakes: How the Rest Learned to Fight the West* (Oxford: Oxford University Press, 2020).
- Kindervater, Katharine Hall. 'Drone Strikes, Ephemeral Sovereignty, and Changing Conceptions of Territory,' *Territory, Politics, Governance* Vol.5, NO.2 (2017), pp. 207-221.
- Kinzer., Stephen, *All the Shah's Men: The Hidden Story of the CIA Coup in Iran* (NJ: Wiley, 2003).
- Kirkpatrick, Jesse. 'Drones and the Martial Virtue Courage,' *Journal of Military Ethics* Vol.14, No.3-4 (2015), pp. 202-219.
- Kirmanj, Sherko, and Abdulla Kukha Sadq. 'Iran's Foreign Policy towards Iraq and Syria: Strategic Significance and Regional Power Balance,' *The Journal of Social, Political, and Economic Studies* Vol.43, No1/2 (2018), pp. 152-172.
- Kitromilides, Paschalis M. 'Political Repression in Nineteenth-Century Europe,' from *American Political Science Review*, Vol. 79, No.1 (1985), pp. 557-58
- Klieman, Aharon. *Statecraft in the Dark: Israel's Practice of Quiet Diplomacy*, Routledge, 2019: pp. 98-158.

- Knights, Michael, et al. 'Soleimani Is Dead: The Road Ahead for Iranian-backed Militias in Iraq,' *CTC Sentinel* Vol.13, (2020), pp. 1-13.
- Knights, Michael. 'Back into the Shadows? The Future of Kata'ib Hezbollah and Iran's Other Proxies in Iraq,' *Washington Institute*, 2020.
- Koh, Harold Hongju. 'Why Do Nations Obey International Law,' *Yale Law Journal* Vol.106, No.1 (1996), pp. 2599-62.
- Kolenda, Christopher D. *Leadership: The Warrior's Art* (New York: Stackpole Books, 2001).
- Kondoch, Boris. 'The Killing of General Quassem Soleimani: Legal and Policy Issues,' *Journal of East Asia and International Law (JEAIL)* Vol.13, No.2 (2020), pp. 419-434.
- Kooijmans, Pieter. 'The ICJ in the 21st Century: Judicial Restraint, Judicial Activism, or Proactive Judicial Policy,' *International and Comparative Law Quarterly*, Vol.56 (2007), pp. 741-62.
- Korstjens, Irene and Albine Moser. 'Series: Practical Guidance to Qualitative Research. Part 2: Context, Research Questions and Designs,' *European Journal of General Practice*, Vol.23, No.1 (2017), pp. 274-279.
- Krahmann, Elke. 'The United States, PMSCs and the State Monopoly on Violence: Leading the Way Towards Norm Change,' *Security Dialogue*, Vol. 44, Issue 1, 2013: pp.53-71.
- Krebs, Ronald. 'How Dominant Narratives Rise and Fall: Military Conflict, Politics, and the Cold War Consensus,' *International Organization*, Vol. 64, Issue 4, Fall 2015: pp. 809-845.
- Krebs, Ronald. *Narrative and the Making of US National Security*, Cambridge University Press, 2015.
- Kreps, Sarah and Micah Zenko. 'The Next Drone Wars Preparing for Proliferation,' *Foreign Affairs* Vol.93 (2014), pp. 68-72.
- Kreps, Sarah E. and Geoffrey PR Wallace. 'International Law, Military Effectiveness, and Public Support for Drone Strikes,' *Journal of Peace Research* Vol.53, No.6 (2016), pp. 830-844.
- Kretzmer, David. 'Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?' *European Journal of International Law*, Vol. 16, Issue 2 (2005), pp. 171-212.
- Kretzmer, David. 'The Inherent Right to Self-Defence and Proportionality in Jus ad Bellum,' *European Journal of International Law*, Vol. 24, No.1 (2013), pp. 235-282

- Kriner, Matthew. 'Tackling Terrorism's Taboo: Shame,' from *Perspectives on Terrorism*, Vol. 12, Issue 2, April 2018: pp. 19-31.
- Kritsiotis, Dino. 'When States Use Armed Force,' *Cambridge Studies in International Relations* Vol.96, No.1 (2004), pp. 45-79.
- Kunz, Josef. 'Individual and Collective Self-Defence in Article 51 of the Charter of the United Nations,' *American Journal of International Law* Vol. 41, No.4 (1947), pp. 872-94.
- Kupperman, Robert and Jeff Kamen. *Final Warning: Averting Disaster in the New Age of Terrorism* (New York: Doubleday, 1989).
- Landay, Jonathan S. 'Obama's Drone War Kills 'Others,' Not Just al Qaida Leaders,' *McClatchy Newspapers*, 13 April 2013.
- Landman, Todd. 'Imminence and Proportionality: The US and UK Responses to Global Terrorism,' *California Western International Law Journal* Vol.38, No.1 (2007), pp.75-95.
- Langdon, Lisa, Alexander J. Sarapu, and Matthew Wells. 'Targeting the Leadership of Terrorist and Insurgent Movements: Historical Lessons for Contemporary Policy Makers,' *Journal of Public and International Affairs*, Vol. 15 (2004), pp. 59–78
- Lao, David. 'Here's What We Know About the U.S. Intelligence on Soleimani's Planned Attack,' *Global News*, 06 January 2020
- Lao, David. 'Protest Erupts After Iran Admits to Shooting Down Ukrainian Aircraft,' *Global News Canada*, 11 January 2020. <<https://globalnews.ca/news/6398794/iranian-protest-downed-ukrainian-aircraft/>>.
- Lasswell, Harold D. and Abraham Kaplan. *Power and Society: A Framework for Political Inquiry*, (London: Transaction Publishers, 2013).
- Laursen, Andreas. 'The Use of Force and (the State of) Necessity,' *Vanderbilt Journal of Transnational Law* Vol.37 (2004), pp. 485-99.
- Lebow, Richard Ned, 'What's So Different About a Counterfactual?' *World Politics*, Vol. 52, No.4 (2000), pp. 550-585.
- Lee, Carol E. and Courtney Kube. 'Trump Authorized Soleimani's Killing 7 Months Ago, with Conditions,' *NBC News*, 13 January 2020.
- Lee, Peter. 'Armed Drones: Automation, Autonomy, and Ethical Decision-Making,' *The Political Economy of Robots* (London: Palgrave Macmillan, 2018), pp. 291-315.

- Lee, Peter. *Reaper Force-Inside Britain's Drone Wars* (London: Kings Road Publishing, 2018).
- Lehrke, Jesse Paul and Rahel Schomaker. 'Kill, Capture, or Defend? The Effectiveness of Specific and General Counterterrorism Tactics Against the Global Threats of the Post-9/11 Era,' *Journal of Security Studies*, Vol. 25, No.4 (2016), pp. 729-762
- Leigh, David. 'Iraq War Logs: Apache Crew Killed Insurgents Who Tried to Surrender,' *The Guardian*, 22 October 2010.
- Lesser, Ian O. 'Countering the New Terrorism: Implications for Strategy,' in *Countering the New Terrorism* (Santa Monica, CA: Rand Corporation, 1999).
- Lesueur, William. *William Lyon Mackenzie* (Toronto: McGill-Queen's Press, 1979), pp. 53-103.
- Levin, Daniel. 'Iran, Hamas and Palestinian Islamic Jihad,' *The Iran Primer: United States Institute of Peace*, 09 July 2018.
- LeVine Susan D. and Joseph A. Rutigliano Jr. 'US Military Use of Non-Lethal Weapons: Reality vs. Perceptions,' *Case Western Reserve Journal of International Law* Vol.47 (2015), pp. 239-59.
- Levitt, Matthew. 'Hezbollah: A Case Study of Global Reach.' *Intelligence and Terrorism Information Center at the Center for Special Studies*, (2003).
- Levitt, Matthew. 'Hezbollah's Procurement Channels: Leveraging Criminal Networks and Partnering with Iran,' *CTC Sentinel* 13 (2019), pp. 1-9.
- Levitt, Matthew. *Hezbollah: The Global Footprint of Lebanon's Party of God* (Washington DC: Georgetown University Press, 2015).
- Levy, Jack S. 'Preventive War and Democratic Politics: Presidential Address to the International Studies Association, March 1, 2007, Chicago,' *International Studies Quarterly* Vol.52, No.1 (2008), pp. 1-24.
- Lewis, Larry and Diane Vavrichek. 'Rethinking the Drone War,' *Marine Corps University Press*, 2016: p. 217.
- Lewis, Michael W. 'Drones and the Boundaries of the Battlefield,' *Texas International Law Journal* Vol. 47, No.293 (2012).
- Leys, Nathan. 'Autonomous Weapon Systems, International Crises, and Anticipatory Self-Defense.' *Yale Journal of International Law* Vol.45 (2020), p. 377-397.
- Lindblom, Charles. *The Policy-Making Process*, 2nd Edition, (Englewood Cliffs, NJ: Prentice-Hall, 1980).

- Lindsey, Charles. *William Lyon Mackenzie* (Toronto: Kessinger, 2004), pp. 1-564.
- Lippman, Daniel, Wesley Morgan, Meridith McGraw and Nahal Toosi. 'How Trump Decided to Kill Iran's Soleimani,' *Politico Europe*, 06 January 2020.
- Lipset, Seymour. *Political Man* (New York: Anchor Books, 1963), Ch. 3.
- Lister, Tim and Eve Bower. 'Growing Doubts on Legality of U.S. Strike that Killed Iranian General,' CNN, 06 January 2020.
- Little, Douglas. 'Mission Impossible: The CIA and the Cult of Covert Action in the Middle East,' *Diplomatic History* Vol.28, No.5, (2004), pp. 663-701.
- Lockie, Stewart. 'Post-Truth Politics and the Social Sciences,' *Environmental Sociology*, Vol. 3, Issue 1, 23 December 2016: pp. 1-5.
- London, Douglas. 'The President, His Relationship with Intelligence, and the Soleimani Strike,' *Just Security*, 15 January 2020.
- Lowe, Vaughan, et al., eds. *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (Oxford: Oxford University Press, 2010).
- Lowther, Adam. *Deterrence: Rising Powers, Rogue Regimes, and Terrorism in the Twenty-first Century* (London: Springer, 2012).
- Lubell, Noam and Nathan Derejko. 'A Global Battlefield? Drones and the Geographical Scope of Armed Conflict,' *Journal of International Criminal Justice* Vol.11, No.1 (2013), pp. 65-88.
- Lubell, Noam. 'The Problem of Imminence in an Uncertain World,' *The Oxford Handbook of the Use of Force in International Law*, (Oxford: Oxford University Press, 2018), p. 6, 'Section V.'
- Lubell, Noam. *Extraterritorial Use of Force Against Non-State Actors* (Oxford: Oxford University Press, 2010), Ch. 1-3.
- Maggs, Gregory E. 'How the United States Might Justify a Preemptive Strike on a Rogue Nation's Nuclear Weapon Development Facilities Under the UN Charter,' *Syracuse Law Review* Vol.57 (2006), pp. 465-89.
- Maggs, Gregory E. 'The Campaign to Restrict the Right to Respond to Terrorist Attacks in Self-Defense Under Article 51 of the UN Charter and What the United States Can Do About It,' *Regent Journal of International Law*, Vol.4 (2006), pp. 149-69.

- Mahmood, Mohammed Salah. 'The Impact of President Trump's Tweets on US Foreign Policy Towards: Iran, Saudi Arabia and Israel,' *Tikrit Journal for Political Science*, No. 19, (2020), pp. 197-220.
- Makki, Danny. 'Qassem Soleimani's Reign May Be Over, But His Legacy in Syria Will Endure,' *Middle East Institute*, 22 January 2020.
- Malone, Rebecca. 'Trump's First Year: Analyzing the Trump Administration's Use of Drone Strikes as a Counterterrorism Strategy in 2017,' *Georgetown Security Studies Review* Vol.6, No.2 (2018), pp. 6-18.
- Maloney, Suzanne. 'What Both Trump and His Critics Get Wrong About the IRGC Terrorist Designation,' *Brookings Institution*, 11 April 2019.
- Maloney, Suzanne. *How the Iraq War Has Empowered Iran*, (Washington DC: Brookings Institution, 2008).
- Manjikian, Mary. 'Special Problems I: The Question of Preemption,' *The Ashgate Research Companion to Military Ethics* (London: Routledge, 2016), pp. 79-92.
- Mannes, Aaron. 'Testing the Snake Head Strategy: Does Killing or Capturing Its Leaders Reduce a Terrorist Group's Activity?' *Journal of International Policy Solutions*, Vol. 9, No.1 (2008), pp. 40-49.
- Mansour, Renad and Faleh A. Jabar. 'The Popular Mobilization Forces and Iraq's Future,' *Carnegie Endowment*, April 2017.
- Manza, Jeff, and Ned Crowley. 'Ethnonationalism and the Rise of Donald Trump,' *Contexts* Vol.17, No.1 (2018), pp. 28-33.
- Marchetti, Victor, John D. Marks, and Melvin L. Wulf. *The CIA and the Cult of Intelligence* (New York: Knopf, 1974).
- Marietta, Morgan, Tyler Farley, Tyler Cote, and Paul Murphy. 'The Rhetorical Psychology of Trumpism: Threat, Absolutism, and the Absolutist Threat,' *The Forum*, Vol. 15, No. 2 (2017), pp. 313-332.
- Marietta, Morgan. *The Politics of Sacred Rhetoric: Absolutist Appeals and Political Persuasion*, (Waco: Baylor University Press, 2012), pp. 7-23.
- Marsh, David et. al. 'Two Cheers for Interpretivism: Deconstructing the British Political Tradition,' *Australian Journal of Public Administration*, Vol. 73, Issue 3, 23 September 2014: pp. 340-348.

- Marshall, Jonathan, Peter Dale Scott, and Jane Hunter. *The Iran-Contra Connection: Secret Teams and Covert Operations in the Reagan Era*, Vol. 120 (London: Black Rose Books Ltd., 1987).
- Martin, Curtis H. 'Good Cop/Bad Cop as a Model of Nonproliferation Diplomacy Toward North Korea and Iran,' *The Nonproliferation Review*, Vol.14, No.1, (2007), pp. 61-88.
- Marton, Péter. 'Investigating the Calculated Elimination of Removable Enemies: The Puzzle of Terrorism Decapitation Research,' *The Polish Quarterly of International Affairs*, Vol. 22, (2013), pp. 63-83.
- Mastrolembo, Renee. 'Imminence and State Right to Anticipatory Self-Defence: Responding to Contemporary Security Threats and Divergence in Legal Diplomacy,' *Canberra Law Review* Vol.16 (2019), pp. 143-63.
- Mattair, Thomas R. 'The United States and Iran: Diplomacy, Sanctions and War,' *Middle East Review*, Vol. 17, No.2, (2010), pp. 52-61.
- Mazarr, Michael J. *Leap of Faith: Hubris, Negligence, and America's Greatest Foreign Policy Tragedy* (New York: Public Affairs Publishing, 2019).
- Mazzetti, Mark. *The Way of the Knife: The CIA, a Secret Army, and a War at the Ends of the Earth* (London: Penguin Group USA, 2014).
- McCarthy, Tom. 'Donald Trump and the Erosion of Democratic Norms in America,' *The Guardian*, 02 June 2018.)
- McChrystal et al., Stanley. *Team of Teams: The Power of Small Groups in a Fragmented World* (New York: Portfolio, 2015).
- McCormack, Gordon H. 'Terrorist Decision Making,' *Annual Review of Political Science*, Vol. 6, (June 2003), pp. 473–507.
- McDermott, Roger N. *Countering Global Terrorism: Developing the Anti-Terrorist Capabilities on Central Asian Militaries* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2004), pp. 7-8.
- McDonald, Jack. 'Decapitation, Repression, or Cauterization? The Problem of Targeted Killings,' from the *Handbook of Terrorism and Counter-Terrorism Post 9/11* (London: Edward Elgar Publishing, 2019).
- McDonald, Jack. *Ethics, Law and Justifying Targeted Killings: The Obama Administration at War* (London: Routledge, 2016).

- McDonnell, Thomas Michael. 'Sow What You Reap: Using Predator and Reaper Drones to Carry Out Assassinations or Targeted Killings of Suspected Islamic Terrorists,' *George Washington International Law Review*, Vol. 44, 2012: pp. 243-291.
- McGreal, Chris. 'WikiLeaks Reveal Video Showing US Air Crew Shooting Down Iraqi Civilians,' *The Guardian*, 05 April 2010.
- McKelvey, T. 'Drones Kill Rescuers in 'Double-Tap,' Say Activists, *BBC News*, 22 October 2013.
- McMahan, Jeff. *Killing by Remote Control: The Ethics of an Unmanned Military* (Oxford: Oxford University Press, 2013).
- Meek et al., James Gordon. 'U.S. Tried to Kill Iranian Commander in Yemen Same Night as Soleimani Strike: Officials,' *ABC News*, 10 January 2020.
- Mégret, Frédéric. 'The Humanitarian Problem with Drones,' *Utah Law Review* Vol.5 (2013), p. 1283-98.
- Meisels, Tamar and Jeremy Waldron. *Debating Targeted Killing: Counterterrorism or Extrajudicial Execution?* Oxford University Press, 2020: pp. 1-282.
- Mendez, Tony and Christopher Moran. *Company Confessions: Secrets, Memoirs, and the CIA*, St. Martin's Publishing Group, 2016.
- Merom, Gil. 'The Logic and Illogic of an Israeli Unilateral Preventive Strike on Iran,' *The Middle East Journal* Vol.71, No.1 (2017), pp. 87-110.
- Merriam-Webster Dictionary. "Taboo," Merriam-Webster: <https://www.merriam-webster.com/dictionary/taboo>.
- Merriam, Sharan B. *Qualitative Research: A Guide to Design and Implementation* (San Francisco: CA, John Wiley, 2014).
- Meyer P.J. and Nigel D. White. 'The Twin Towers Attack: An Unlimited Right to Self-Defence?' *Journal of Conflict and Security Law* Vol.7, No.1 (2002), pp. 5-17.
- Meyer, Theodoric. 'Trump Stands by Proposal to Revive Waterboarding,' *Politico*, 02 July 2016.
- Michael J. Glennon, *National Security and Double Government* (Oxford: Oxford University Press, 2014).
- Mignot-Mahdavi, Rebecca. 'Drones Programs, the Individualization of War and the Ad Bellum Principle of Proportionality,' in *Lieber Series Vol. 4*, Claus Kress & Robert Lawless eds., (Oxford: Oxford University Press, 2019).

- Milanovic, Marko. 'The Soleimani Strike and Self-Defence Against an Imminent Armed Attack,' *European Journal of International Law*, 07 January 2020, pp. 2-5.
- Milanovic, Marko. *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford: Oxford University Press, 2011).
- Miles, Rufus E. 'The Origin and Meaning of Miles' Law,' *Public Administration Review*, Vol. 38, No. 5 (1978), pp. 399-403.
- Miller, Greg. 'White House Approves Broader Yemen Drone Campaign,' *The Washington Post*, 25 April 2012.
- Miller, Hannah. 'From "Rights-based" to "Rights-framed" Approaches: A Social Constructionist View of Human Rights Practice,' *The International Journal of Human Rights* Vol.14, No.6 (2010), pp. 915-931.
- Miller, Joshua Rhett. 'A Look at the Deadly Capabilities of the MQ-9 Reaper Drone That Took Out Gen. Qassem Soleimani,' *The New York Post*, 03 January 2020.
- Miller, Zeke and Julie Pace. 'US Long Watched Soleimani, But Feared Risks of a Strike,' AP News, 04 January 2020.
- Milligan, Charles S. 'Alternatives to the Use of Force and the Role of the United Nations.' *Denver Journal of International Law & Policy* Vol.20, No.1 (2020).
- Mills, David. *Idea of Loyalty in Upper Canada, 1784-1850* (McGill-Queen's Press-MQUP, 1988).
- Mir, Asfandiyar, and Dylan Moore. 'Drones, Surveillance, and Violence: Theory and Evidence from a U.S. Drone Program,' *International Studies Quarterly* Vol.63, No.4 (2019), pp. 846-862.
- Moir, Lindsay. *Reappraising the Resort to Force: International Law, Jus ad Bellum and the War on Terror* (London: Bloomsbury Publishing, 2010).
- Moore, John Bassett. *A Digest of International Law*, Volume 2, (Government Printing Office, 1902).
- Moran, Christopher R. and Richard J. Aldrich. 'Trump and the CIA: Borrowing from Nixon's Playbook,' *Foreign Affairs*, 24 April 2017.
- Moran, Christopher. *Classified: Secrecy and the State in Modern Britain*. United Kingdom, Cambridge University Press, 2013.
- Morgan, Ryan. 'Iraqi, Syrian Informants Helped US Track Soleimani Before Strike,' *American Military News*, 10 January 2020.

- Morkevicius, Valerie. 'Tin Men: Ethics, Cybernetics and the Importance of Soul,' *Journal of Military Ethics* Vol.13, No.1 (2014), pp. 3-19.
- Morris, Justin and Nicholas J. Wheeler. 'The Security Council's Crisis of Legitimacy and the Use of Force,' *International Politics* Vol.44, No.2-3 (2007), pp. 214-231.
- Mouton, Johann. *Understanding Social Research* (New York: Van Schaik Publishers, 1996).
- Mueller et al., Karl P. *Attacking in Self-Defence: Legality and Legitimacy of Striking First, from Striking First: Preemptive and Preventative Attack in U.S. National Security Policy* (Santa Monica: RAND Publishing, 2006).
- Mulligan, Shane P. 'The Uses of Legitimacy in International Relations,' *Millennium Journal of International Studies*, Vol. 34, Issue 2, 01 February 2006: pp. 349-375.
- Murphy, Richard and Afsheen John Radsan. 'Due Process and Targeted Killing of Terrorists,' *Cardozo Law Review* Vol.31 (2009), p. 405.
- Murphy, Sean D. *United States Practice in International Law: Vol 2, 2002-2004* (Cambridge: Cambridge University Press, 2009).
- Myers Michael D. and David Avison. *Qualitative Research in Information Systems: A Reader* (New York: Sage Publications, 2002).
- Myers, Meghann. 'US Complies with New Rules as Iraq Cracks Down on Use of Its Airspace,' *Military Times*, 16 August 2019.
- Naftali, Timothy. *Blind Spot: The Secret History of American Counterterrorism* (New York: Basic, 2005).
- Nai, Alessandro, Ferran Martínez Coma, and Juergen Maier. 'Donald Trump, Populism, and the Age of Extremes: Comparing the Personality Traits and Campaigning Styles of Trump and Other Leaders Worldwide,' *Presidential Studies Quarterly* 49.3 (2019), pp. 609-643.
- Nakamura, David. 'In Confrontation with Iran, Trump Wrestles with the Shadow of Obama, The Metric He Has to Beat,' *The Washington Post*, 05 January 2020.
- Nakdimon, Shlomo. *First Strike: The Exclusive Story of How Israel Foiled Iraq's Attempt to Get the Bomb*, (New York: Summit Books, 1987).
- Nasrullah Mirza, Muhammad and Adil Sajid. 'Use of Force in Self-Defence for Global Peace,' *Strategic Studies* Vol.39, No.3 (2019), pp. 1-21.
- Nasser, Tony. 'Modern War Crimes by the United States: Do Drone Strikes Violate International Law-Questioning the Legality of US Drone Strikes and Analyzing the US Response to

- International Reproach Based on the Realism Theory of International Relations,' *Southern California Interdisciplinary Law Journal* 24 (2014), p. 289.
- Naylor, Sean. *Relentless Strike: The Secret History of Joint Special Operations Command* (New York: St. Martin's, 2016).
- Neumeister, Larry. 'Not Guilty Plea in Plot to Kill Saudi Ambassador,' *Associated Press*, 24 October 2011.
- Newburger, Emma. 'Defence Secretary Esper 'Didn't Specific Evidence of Trump Claim That Iran Planned Embassy Attacks,' *CNBC News*, 12 January 2020.
- Newkirk, Anthony. 'Diplomacy and Hypocrisy: The Case of Iran,' *Middle East Policy*, Vol. 15, No. 1 (2008), pp. 30-45
- Nichols, Thomas M. 'Sovereignty and Preventive War in the Twenty-First Century,' in *Preventive Force: Drones, Targeted Killing, and the Transformation of Contemporary Warfare* (2016), pp. 88-97.
- Nichols, Thomas M. *Eve of Destruction: The Coming Age of Preventive War* (Pennsylvania: University of Pennsylvania Press, 2008).
- Nichols, Thomas. *The Coming Age of Preventive War* (Philadelphia: University of Pennsylvania Press, 2008).
- Norton, Augustus Richard. 'The Role of Hezbollah in Lebanese Domestic Politics,' *The International Spectator*, Vol. 42, No. 4 (2007), pp. 475-491.
- Norton, Richard. *Hezbollah: A Short History* (Princeton, NJ: Princeton University Press, 2007).
- Novack, P. J. 'Due Process and Surviving America's Kill List: How the Courts and Congress Can End the Executive Branch's Encroachment on Civil Liberties in the War on Terror,' *Journal of Law, Policy and Military Affairs* Vol.1 (2019), pp. 125-34.
- Nyhamar, Tony. 'How Do Norms Work? A Theoretical and Empirical Analysis of African International Relations,' *The International Journal of Peace Studies*, Vol. 5, No. 2, Winter 2000: pp. 27-43.
- O'Connell, Mary Ellen, Christian J. Tams, and Dire Tladi, *Self-Defence Against Non-State Actors*, Vol. 1. (Cambridge: Cambridge University Press, 2019).
- O'Connell, Mary Ellen. 'American Exceptionalism and the International Law of Self-Defense.' *Denver Journal of International Law and Policy*, Vol.31 (2002), pp. 43-55.

- O'Connell, Mary Ellen. 'Enhancing the Status of Non-State Actors Through a Global War on Terrorism,' 43 *Columbia Journal of Transnational Law* Vol.435, (2005).
- O'Connor, Anne, Barry Carpenter, and Barry Coughlan. "An Exploration of Key Issues in the Debate Between Classic and Constructivist Grounded Theory." *Grounded Theory Review* Vol.7, No.1 (2018).
- O'Ballance, Edgar. 'The Western Hostage Saga, 1984–92,' in *Islamic Fundamentalist Terrorism, 1979–95* (London: Palgrave Macmillan, 1997), pp. 99-124.
- O'Brien, Connor. 'Trump Vetoes Bill to Curtail His Iran War-Making Authority,' *Politico*, 06 May 2020.
- O'Connell, Mary Ellen. 'The Killing of Soleimani and International Law,' *European Journal of International Law*, 6 January 2020.
- O'Connell, Mary Ellen. 'The Myth of Preemptive Self-Defence,' *American Society of International Law Task Force* (2002), pp. 8-10.
- O'Connell, Mary Ellen. 'Why Obama's Targeted Killing is Worse than Bush's Torture,' *The Guardian*, 20 January 2012.
- O'Connor, Anne, Barry Carpenter, and Barry Coughlan. "An Exploration of Key Issues in the Debate Between Classic and Constructivist Grounded Theory." *Grounded Theory Review* Vol.7, No.1 (2018).
- O'Connor, Tom. 'U.S. Now Needs Iraq's Permission to Drop Bombs There,' *Newsweek-World News*, 16 August 2019.
- O'Grady, Siobhán. 'Why Soleimani's Killing is Different from Other Targeted Attacks by U.S.,' *The Washington Post*, 04 January 2020.
- O'Rourke Lindsey A., *Covert Regime Change: America's Secret Cold War* (New York: Cornell University Press, 2018).
- Obama, Barack H. *Nobel Lecture*, (Oslo City Hall, 10 December 2009) <<https://www.nobelprize.org/prizes/peace/2009/obama/26183-nobel-lecture-2009/>>.
- Öberg, Marko Divac. 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ,' *European Journal of International Law* Vol.16, No.5 (2005), pp. 879-906.
- Oberschall, Anthony. *Social Conflict and Social Movements* (New York: Prentice-Hall, 1973).

- Ochoa-Ruiz, Natalia and Esther Salamanca-Aguado. 'Exploring the Limits of International Law Relating to the Use of Force in Self-Defence,' *European Journal of International Law* Vol.16, No.3 (2005), pp. 499-524.
- Ofek, Hillel. 'The Tortured Logic of Obama's Drone War,' *The New Atlantis*, No.27 (2010), pp. 35-44.
- Oktav, Özden Zeynep. 'Understanding Iran's Approach to Violent Non-state Actors: The ISIS and YPG Cases,' *Violent Non-state Actors and the Syrian Civil War*, (Springer, Cham, 2018), pp. 193-210.
- Olesker, Ronnie. 'The Securitization Dilemma: Legitimacy in Securitization Studies,' *Critical Studies on Security*, Vol. 6, Issues 3, 25 January 2018: pp. 312-329.
- Oliver, Pamela. 'Rewards and Punishments as Selective Incentives for Collective Action: Theoretical Investigations,' *American Journal of Sociology*, Vol. 85, No.1 (1980), pp. 1356-75
- Olson, Joshua and Muhammad Rashid. 'Modern Drone Warfare: An Ethical Analysis,' *ASEE Southeast Section Conference*, (2013), p. 3.
- Olsthoorn, Peter. 'Courage in the Military: Physical and Moral,' *Journal of Military Ethics* Vol.6, No.4 (2007), pp. 270-279.
- Oppenheim, Lassa. *International Law: A Treatise*, Vol, 2, (London: Longman, 1944), p. 470.
- Oppermann, Kai and Alexander Spencer. 'Telling Stories of Failure: Narrative Constructions of Foreign Policy Fiascos,' *Journal of European Public Policy*, Vol. 23, Issue 5, 18 January 2016: pp. 685-701.
- Orr, Andrew C. 'Unmanned, Unprecedented, and Unresolved: The Status of American Drone Strikes in Pakistan Under International Law.' *Cornell International Law Journal* Vol.44, No.1 (2011), pp. 729-52.
- Ottaway, David B. 'Conclusive Proof of Terrorist Acts by Car-Bomb Target Is Not Evident,' *The Washington Post*, 17 May 1985, p. A-31.
- Otto Jean L. and Bryant J. Webber. 'Mental Health Diagnoses and Counseling Among Pilots of Remotely Piloted Aircraft in the United States Air Force,' *Medical Surveillance Monthly Report* Vol.20, No.3 (2013), pp. 3-8.
- Ozkizilcik, Omer. 'Soleimani's Death Proves the US Has Friends in Syria, But It's Not the YPG,' *TRT World*, 16 January 2020.

- Paddeu, Federica I. 'Use of Force Against Non-State Actors and the Circumstance Precluding Wrongfulness of Self-Defence,' *Leiden Journal of International Law* Vol.30, No.1 (2017), pp. 93-115.
- Palmer, Anna and Jake Sherman. 'Will Impeachment Matter in 2020?' *Politico*, 10 January 2020.
- Pandey, Jatin. 'Deductive Approach to Content Analysis,' in *Qualitative Techniques for Workplace Data Analysis* (London: IGI Global, 2019), pp. 145-169.
- Pantucci, Raffaello. 'Soleimani's Assassination: Could Jihadist Groups Benefit?' *Counter-Terrorist Trends and Analyses*, Vol. 12. No. 2 (2020), pp. 11-12.
- Pape, Matthew S. 'Constitutional Covert Operations: A Force Multiplier for Preemption,' *Military Review* Vol.84, No.2, (2004), p. 52.
- Pape, Robert A. 'The Strategic Logic of Suicide Terrorism,' *American Political Science Review*, Vol. 97, No.1 (2003), pp. 343–361.
- Pappas, Alex. 'Trump Tells Fox News' Laura Ingraham "Four Embassies" Were Targeted in Imminent Threat from Iran,' *Fox News*, 10 January 2020.
- Parasiliti, Andrew. 'Iran: Diplomacy and Deterrence, Global Politics and Strategy,' *International Institute for Strategic Studies*, Vol. 51, No.5 (2009), pp. 5-13
- Parks, Perry. 'Covering Trump's "Carnival": A Rhetorical Alternative to "Objective" Reporting,' *Journal of Journalism Practice*, Vol. 13, No.10 (2019), pp. 1164-1184.
- Parsi, Trita. *A Single Roll of the Dice: Obama's Diplomacy with Iran* (Yale: Yale University Press, 2012).
- Paul, Thazha. *Asymmetric Conflicts: War Initiation by Weaker Powers* (New York: Cambridge University Press, 1994).
- Paust, Jordan J. 'Use of Armed Force Against Terrorists in Afghanistan, Iraq, and Beyond.' *Cornell International Law Journal* Vol.35, No.1 (2001), p. 533.
- Paust, Jordan. 'Remotely Piloted Warfare as a Challenge to the Jus ad Bellum,' from *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2017).
- Pearson, Frederic S. and Martin J. Rochester. *International Relations: The Global Condition in the Twenty-First Century*, 4 Edition, (New York: The McGraw Hill, 1998).
- Pedahzur, Ami and Arie Perliger. 'The Changing Nature of Suicide Attacks: A Social Network Perspective,' *Social Forces*, Vol. 84 (2006), pp. 1987-2008

- Perry, Tom et al. 'Hezbollah: It's Time for Iran's Allies to Start Working to Avenge Soleimani,' *Reuters*, 12 January 2020
- PEW Staff. 'Majority of U.S. Public Says Trump's Approach on Iran Has Raised Chances of a Major Conflict,' *PEW Research Center*, 15 January 2020.
- PEW Staff. 'Majority Supports U.S. Drone Strikes: Survey Conducted May 2015,' *PEW Research Center*, 28 May 2015.
- Phillips, Christopher. *The Battle for Syria: International Rivalry in the New Middle East* (New Haven: Yale University Press, 2016).
- Pierson, Charles. 'Preemptive Self-Defense in an Age of Weapons of Mass Destruction: Operation Iraqi Freedom,' *Denver Journal of International Law and Policy*, Vol.33, No.1 (2004), pp. 150-78.
- Pilecki, Andrew, et al. 'Moral Exclusion and the Justification of US Counterterrorism Strategy: Bush, Obama, and the Terrorist Enemy Figure,' *Peace and Conflict: Journal of Peace Psychology* Vol.20, No.3 (2014), pp. 285-299.
- Pillalamarri, Akhilesh. 'Is the New US Drone Base in Niger Worth the Cost?' *Defence News*, 16 October 2018.
- Pillar, Paul R. *Terrorism and U.S. Foreign Policy* (Washington, DC: Brookings Institution Press, 2001).
- Plaw, Avery, Matthew S. Fricker, and Brian Glyn Williams. 'Practice Makes Perfect? The Changing Civilian Toll of CIA Drone Strikes in Pakistan,' *Perspectives on Terrorism* Vol5., No.5/6 (2011), pp. 51-69.
- Polin, Raymond. *Analyse Philosophique de L'Idée de Légitimité*, L'Idée de Légitimité, pp. 22, 28.
- Pollak, Joel, and Larry Schweikart. *How Trump Won: The Inside Story of a Revolution* (New York: Simon and Schuster, 2017).
- Polychroniou, C. J. 'Human Rights, State Sovereignty, and International Law: An Interview with Richard Falk,' *Global Policy Journal*, 11 September 2018.
- Polymeropoulous, Marc. 'How to Think About the Soleimani Strike in Four Questions,' *Just Security*, 17 January 2020.
- Pop, Ioan, and Mitchell D. Silber. 'Iran and Hezbollah's Pre-Operational Modus Operandi in the West,' *Studies in Conflict & Terrorism* (2020), pp. 1-24.

- Porter, Gareth. 'CIA Drone Operators Oppose Strikes as Helping al Qaeda,' *Inter Press News Service Agency*, 03 June 2010.
- Posner, Eric A., and Miguel FP De Figueiredo. 'Is the International Court of Justice Biased?' *The Journal of Legal Studies* Vol.34, No.2 (2005), pp. 599-630.
- Postel, Danny, and Nader Hashemi. 'Playing with Fire: Trump, the Saudi-Iranian Rivalry, and the Geopolitics of Sectarianization in the Middle East,' *Mediterranean Yearbook*, (2018).
- Poznansky, Michael. 'Revisiting Plausible Deniability,' *Journal of Strategic Studies* (2020), pp. 1-23.
- Prados, John. *President's Secret Wars: CIA and Pentagon Covert Operations from World War II Through the Persian Gulf* (Chicago, IL: Elephant Paperbacks, 1996), pp. 379.
- Prados, John. *Presidents' Secret Wars: CIA and Pentagon Covert Operations Since World War II*, William Morrow and Company, 1986.
- Prados, John. *The Ghosts of Langley: Into the CIA's Heart of Darkness* (New York: New Press, 2017).
- Pratt, Simon Frankell. 'Norm Transformation and the Institutionalization of Targeted Killing in the U.S.,' *European Journal of International Relations*, Vo.25, No.3 (2018), pp. 723-747.
- Price, Bryan C. 'Targeting Top Terrorists: How Leadership Decapitation Contributes to Counterterrorism,' *Journal of International Security*, Vol. 4. No. 36, (2012), pp. 9-46.
- Prifti, Bledar. 'The Bush Doctrine in the Middle East: A New American Century,' in *US Foreign Policy in the Middle East* (Palgrave Macmillan, 2017) pp. 91-112.
- Pufendorf, Samuel. *De Jure Naturae Et Gentium Libri Oct*, Vol. 2 (New York: Oceana Publishing, 1964).
- Punch, Keith F. 'Qualitative Research: Overview, Design and Grounded Theory,' in *Introduction to Social Research: Quantitative and Qualitative Approaches* (London, Sage, 1998).
- Pye, Lucian. *Aspects of Political Development* (Boston: Little, Brown, 1966).
- Raas, Whitney and Austin Long. 'Osirak Redux? Assessing Israeli Capabilities to Destroy Iranian Nuclear Facilities,' *International Security* Vol.31, No.4 (2007), pp. 7-33.
- Radsan, Afsheen John and Richard Murphy. 'The Evolution of Law and Policy for CIA Targeted Killing,' *Journal of National Security Law and Policy*, Vol.5, No.1 (2012), pp. 429-41.
- Ranstorp, Magnus. 'The Strategy and Tactics of Hizballah's Current Lebanonization process,' *Mediterranean Politics* Vol.3, No.1 (1998), pp. 103-134.

- Ranstorp, Magnus. *Hizb 'allah in Lebanon: The Politics of the Western Hostage Crisis* (London: MacMillan, 1997).
- Ravanchi, Majid Takht. 'Letter No.13259 to the United Nations, Permanent Mission of the Islamic Republic of Iran to the United Nations,' *PBS News*, 08 January 2020<<https://pbs.twimg.com/media/ENzf2JzX0AABPCD.png>>.
- Read, Russ. 'World's Most Feared Drone: CIA's MQ-9 Reaper Killed Soleimani,' *The Washington Examiner*, 03 January 2020.
- Reid, John. 'Reid Addresses RUSI on '20 Century Rules,' from *21 Century Conflict*, 03 April 2006.
- Reisman, Michael W. 'Will a Policy of Preemptive Self-Defense Make Us All Safer?' *Yale Law School, Public Law Research Paper* 638 (2018).
- Reisman, William Michael et. al. *Regulating Covert Action: Practices, Contexts, and Policies of Covert Coercion Abroad in International and American Law*, Yale University Press, January 1992: pp. 1-250.
- Reiter, Dan. 'Learning, Realism, and Alliances: The Weight of the Shadow of the Past,' *World Politics*, Vol.46, No.1 (1993), pp. 490-526.
- Renshon, Stanley A. 'The Trump Doctrine and Conservative American Nationalism,' from *The Trump Doctrine and the Emerging International System* (London: Palgrave Macmillan, Cham, 2020), pp. 3-38.
- Reuters Staff. 'Exclusive: Informants in Iraq, Syria Helped U.S. Kill Iran's Soleimani—sources,' *Reuters*, 09 January 2020.
- Reuters Staff. 'Protesters Storm US Embassy Compound in Baghdad,' *Reuters*, 31 December 2019.
- Reuters Staff. 'U.S. Will No Longer Report How Many Civilians It Kills with Drones Outside War Zones,' *CBC News*, 06 March 2019.
- Rezaei, Sohrab and Niloofar Nourali. 'Language and Power: The Use of Persuasive Techniques in Iran and US President Speeches,' *Journal of Language Teaching and Research*, Vol. 7, No. 6 (2016), pp. 1203-1209.
- Riedel, Bruce. 'America and Iran: Flawed Analysis, Missed Opportunities, and Looming Dangers,' *The Brown Journal of World Affairs*, Vol. 15. No. 1 (2008), pp. 109-111.

- Riedel, Bruce. 'In Yemen, Iran Outsmarts Saudi Arabia Again,' *Brookings Institution*, 06 December 2017.
- Riley, Charles. 'The Middle East Has Become a Nightmare for Airlines,' *CNN*, 22 June 2019.
- Risen, James. *State of War: The Secret History of the CIA and the Bush Administration* (New York: Simon and Schuster, 2006).
- Ritchie, Jane and Jane Lewis. *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (London: Sage Publications, 2003).
- Rivkin Jr, David B. 'The Virtues of Preemptive Deterrence,' *Harvard Journal of Public Policy*, Vol.29 (2005), pp. 85.
- Robbins, Jeff. 'Trump Cronies Put Careers Before Country,' *Boston Herald*, 14 October 2019.
- Roberts, David. 'Post-Truth Politics,' *Grist*, 01 April 2010: <https://grist.org/article/2010-03-30-post-truth-politics/>.
- Rockefeller, Mark L. 'The Imminent Threat Requirement for the Use of Preemptive Military Force: Is It Time for a Non-Temporal Standard,' *Denver Journal of International Law and Policy* Vol.33 (2004), p. 131.
- Rollins, John. 'Osama bin Laden's Death: Implications and Considerations,' *International Journal of Terrorism & Political Hot Spots*, Vol. 6. No.4 (2011), pp. 627-652.
- Rosati, Jerel A. *The Politics of United States Foreign Policy* (Orlando, FL: Harcourt Brace and Company, 1993).
- Roscini, Marco. 'Threats of Armed Force and Contemporary International Law,' *Netherlands International Law Review* Vol.54, No.2 (2007), pp. 229-277.
- Rose, Jonathan. 'Brexit, Trump and Post-Truth Politics,' *Journal of Public Integrity*, Vol. 19, Issue 6, 18 April 2017: pp. 555-558.
- Rositzke, Harry. *The CIA's Secret Operations: Espionage, Counterespionage, and Covert Action*, (London: Routledge, 2019).
- Rositzke, Harry. *The CIA's Secret Operations: Espionage, Counterespionage and Covert Action*, Routledge, 2019: pp.1-287.
- Rothwell, Donald R. 'Anticipatory Self-Defence in the Age of International Terrorism,' *University of Queensland Law Journal* Vol.23 (2005), pp. 24, 337

- Rouillard, Louis-Philippe. 'The Caroline Case: Anticipatory Self-Defence in Contemporary International Law,' *Miskolc Journal of International Law*, Vol. 1, No.2, (2004), pp. 104-120.
- Rubin, Gabriel. *Donald Trump, Twitter, and Islamophobia: The End of Dignity in Presidential Rhetoric About Terrorism, Presidential Rhetoric on Terrorism under Bush, Obama and Trump* (London: Palgrave Pivot, Cham, 2020).
- Rubin, Jennifer. 'This Might be Trump's Worst Lie Ever,' *The Washington Post*, 13 January 2020.
- Rubin, Uzi. 'Operation 'Shahid Soleimani': Iran's Revenge,' *Begin-Sadat Center for Strategic Studies*, February 2020, pp. 7-19.
- Runciman, W.G. *Social Science and Political Theory* (Cambridge: Cambridge University Press, 1963).
- Ruys, Tom, Olivier Corten, and Alexandra Hofer, eds. *The Use of Force in International Law: A Case-based Approach* (Oxford: Oxford University Press, 2018).
- Ruys, Tom. *Armed Attack and Article 51 of the U.N. Charter* (Cambridge: Cambridge University Press, 2010).
- Ryan, Gery and H. Russell Bernard. 'Data Management and Analysis Methods,' in Denzin and Lincoln, *Handbook of Qualitative Research*, pp. 769-802.
- Ryan, Klem. 'What's Wrong with Drones? The Battlefield in International Humanitarian Law,' from *The American Way of Bombing: Changing Ethical and Legal Norms, from Flying Fortresses to Drones* (New York: Cornell University Press: New York, 2014), p. 211.
- Sabelli, N. *Constructionism: A New Opportunity for Elementary Science Education* (New York: DRL Div. of Research on Learning in Formal and Informal Settings, 2008) pp. 193–206.
- Sadeghi, Shiva, and Somaye Solati. 'Study of the Authority in the Discourse of Haj Qasem Soleimani Relying on the Semiotic Structures: Examples Lecture by Trump,' *Islamic Revolution Studie* Vol.1, No.1, (2019), pp. 54-76.
- Sadjadpour, Karim. 'The Sinister Genius of Qassem Soleimani,' *The Wall Street Journal*, 10 January 2020.
- Sageman, Marc. *Understanding Terror Networks* (Pennsylvania: University of Pennsylvania Press, 2004)
- Samii, Abbas William. 'A Stable Structure on Shifting Sands: Assessing the Hizbullah-Iran-Syria Relationship,' *The Middle East Journal* Vol.62, No.1 (2008), pp. 32-53.

- Sanders, Rebecca. *Plausible Legality: Legal Culture and Political Imperative in the Global War on Terror* (Oxford: Oxford University Press, 2018).
- Sanders, Rebecca. *The Fate of Human Rights in the Global War on Terror*, (Oxford: Oxford University Press, 2018).
- Sandler, Rachel. 'Defense Secretary Mark Esper Says He Didn't See Evidence of Embassy Attacks,' *Forbes*, 12 January 2020 <<https://www.forbes.com/sites/rachelsandler/2020/01/12/defense-sec-mark-esper-says-he-didnt-see-evidence-of-embassy-attacks-as-trump-had-claimed/#552bac4c1c4f>>.
- Sandler, Todd and Kevin Siqueira. 'Global Terrorism: Deterrence Versus Pre-Emption,' *Canadian Journal of Economics/Revue Canadienne D'économie* Vol.39, No.4 (2006), pp. 1370-1387.
- Sandoz, Yves, Christophe Swinarski, and Bruno Zimmermann, 'Commentary on the Additional Protocols,' *International Committee of the Red Cross*, 08 June 1987, p. 263.
- Sang, Nguyen Van. 'The Caroline Affair and the Diplomatic Crisis between Great Britain and the United States, 1837–1841,' *Prawo i Polityka* Vol.8 (2018), pp. 73-83.
- Sapiro, Miriam. 'Iraq: The Shifting Sands of Preemptive Self-Defense,' *The American Journal of International Law* Vol.97, No.3 (2003), pp. 599-607.
- Saul, Jonathan, Parisa Hafezi, and Michael Georgy, 'Exclusive: Iran Steps Up Support for Houthis in Yemen's War- Sources,' *Reuters*, 21 March 2017.
- Savransky, Rebecca. 'Trump: U.S. Has "Become Very Weak and Ineffective,"' *The Hill*, 03 June 2016.
- Scahill, Jeremy. *The Assassination Complex* (New York: Simon and Schuster, 2016).
- Scarborough, Rowan. 'Qassem Soleimani Was Kept on U.S. Sanctions List, But Not Europe's,' *The Washington Times*, 15 January 2020.
- Schaar, John. *Legitimacy in the Modern State*, in *Power and Community* (New York: Vintage, 1970).
- Schachter, Oscar. 'The Rights of States to Use Armed Force,' *Michigan Law Review*, Vol. 82, (1984), pp. 1620-33.
- Schildkraut, Ryan. 'Where There Are Good Arms, There Must Be Good Laws: An Empirical Assessment of Customary International Law Regarding Preemptive Force' *Minnesota Journal of International Law*, Vol.16, No.1 (2007), pp. 193-213.

- Schmidt Dennis R. and Luca Trenta. 'Changes in the Law of Self-Defence? Drones, Imminence, and International Norm Dynamics,' *Journal on the Use of Force and International Law* Vol.5. No.2 (2018), pp. 201-245.
- Schmitt et al., Eric. 'For Trump, a Risky Decision on Suleimani Is One Other Presidents Had Avoided,' *The New York Times*, 04 January 2020.
- Schmitt, Carl. 'The Nomos of the Earth in the International Law of the Jus Publicum Europaeum,' *Telos Press*, (2006), p. 74.
- Schmitt, Eric, Edward Wong, and Julian E. Barnes. 'U.S. Unsuccessfully Tried Killing a Second Iranian Military Official,' *The New York Times*, 10 January 2020.
- Schmitt, Michael N. 'Drone Attacks Under the Jus ad Bellum and Jus in Bello: Clearing the Fog of Law,' *Yearbook of International Humanitarian Law* (TMC Asser Press, 2011), pp. 311-326.
- Schmitt, Michael N. 'Preemptive Strategies in International Law,' *Michigan Journal of International Law*, Vol. 24, No.2 (2003), pp. 534-536.
- Schmitt, Michael N. *Counter-Terrorism and the Use of Force in International Law* (George C. Marshall European Center for Security Studies, 2002).
- Schmitt, Michael. 'Responding to Transnational Terrorism Under the Jus Ad Bellum: A Normative Framework,' *Naval Law Review*, 2008, pp. 1-21.
- Schone, Mark. 'White House Admits Killing Civilians with Drone Strikes, Denies Breaking Law,' *NBC News*, 22 October 2013.
- Schroen, Gary. *First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan* (New York: Presidio Press, 2006).
- Schulzke, Marcus. 'Drone Proliferation and the Challenge of Regulating Dual-Use Technologies,' *International Studies Review* Vol.21, No.3 (2019), pp. 497-517.
- Schulzke, Marcus. 'Rethinking Military Virtue Ethics in an Age of Unmanned Weapons,' *Journal of Military Ethics* Vol.15, No.3 (2016), pp. 187-204.
- Schulzke, Marcus. *The Morality of Drone Warfare and the Politics of Regulation* (London: Palgrave, 2017), pp. 11-12.
- Schwebel, Stephen M. 'National Judges and Judges Ad Hoc of the International Court of Justice,' *The International and Comparative Law Quarterly* Vol.48, No.4 (1999), pp. 889-900.

- Schweiger, Elisabeth. "The Lure of Novelty: "Targeted Killing" and Its Older Terminological Siblings." *International Political Sociology* Vol.13, No.3 (2019), pp. 276-295.
- Scott, Len. 'Secret Intelligence, Covert Action and Clandestine Diplomacy,' *Intelligence and National Security Journal*, Vol. 19, No. 2, Summer 2004: pp. 322-341.
- Sehrawat, Vivek. 'Legal Status of Drones Under LOAC and International Law,' *Penn State Journal of Law & International Affairs*, Volume 5, Issue 1 War in the 21 Century and Collected Works, April 2017.
- Seliktar, Ofira, and Farhad Rezaei. 'Hezbollah in Lebanon: Creating the Model Proxy,' *Iran, Revolution, and Proxy Wars* (London: Palgrave Macmillan, Cham, 2020), pp. 21-56.
- Sengupta, Kim. 'The Reason Qassem Soleimani was in Baghdad Shows How Complex the Iran Crisis Is,' *The Independent*, 06 January 2020.
- Senn, Martin and Jodok Troy. *The Transformation of Targeted Killing and International Order*, (London: Routledge, 2020), pp. 36-152.
- Shabibi, Namir and Nasser al Sane. 'Nine Children Killed: The Full Details of Botched U.S. Raid in Yemen,' *The Bureau of Investigative Journalism*, 09 February 2017.
- Shah, Niaz A. 'Self-Defence, Anticipatory Self-Defence and Preemption: International Law's Response to Terrorism,' *Journal of Conflict & Security Law*, Vol. 12, Issue 1 (2007), pp. 95-126.
- Shah, Sikander Ahmed. *International Law and Drone Strikes in Pakistan: The Legal and Socio-Political Aspects*, (London: Routledge, 2014) p. 175.
- Shahla, Arsalan and Yasna Haghdoust. 'Iran's Supreme Leader says, Severe Retaliation Awaits Soleimani Killers,' *Bloomberg News*, 03 January 2020.
- Shane, Scott. 'The Enduring Influence of Anwar al-Awlaki in the Age of the Islamic State,' *Combating Terrorism Center at West Point*, Vol. 9, No.7 (2016).
- Shannon, Vaughn. 'International Norms and Foreign Policy,' *Oxford University Encyclopedia of Politics*, 28 June 2017: p. 2.
- Shaw, Ian. *Predator Empire: Drone Warfare and Full Spectrum Dominance* (Minneapolis: University of Minnesota Press, 2016), p. 5.
- Shenhav, Shaul R. 'Political Narratives and Political Reality,' *International Political Science Review*, Vol. 27, No. 3, July 2006: pp. 245-262.

- Sheth, Sonam. 'State Department was Reportedly Unaware of an 'Imminent Threat' to 4 U.S. Embassies, Blowing a Hole Through Trump's Claims,' *Business Insider*, 13 January 2020.
- Shiner, Phil and Dan Carey. 'The Legality of the UK's Use of Armed Unmanned Aerial Vehicles (Drones),' *Public Interest Law Journal*, 03 June 2013.
- Shinkman, Paul D. 'To Defeat ISIS Iraq Forced to Accept Iran's Suffocating Embrace,' *US News* (2015).
- Shiraz, Zakia, and Richard J. Aldrich 'Secrecy, Spies and the Global South: Intelligence Studies Beyond the 'Five Eyes' Alliance,' *International Affairs* Vol.95, No.6 (2019), pp. 1313-1329.
- Shue, Henry, and David Rodin. *Preemption: Military Action and Moral Justification* (Oxford: Oxford University Press, 2007).
- Shukla, Archit. 'The Killing of General Soleimani—A Blatant Violation of International Laws,' *The Jurist: University of Pittsburgh Press*, 14 April 2020.
- Silverstone, Scott A. *Preventive War and American Democracy* (London: Routledge, 2007).
- Simma, Bruno. 'NATO, the UN and the Use of Force: Legal Aspects,' *European Journal of International Law*, Vol.10, No.1 (1999), pp. 1-22.
- Singh, Michael. 'The View from Congress: US Policy on Iran,' Testimony Submitted to the Senate Foreign Relations Committee, *The Washington Institute for Near East Policy* (2017), pp. 9-10.
- Slavin, Barbara. 'Qassim Suleimani's Killing Will Unleash Chaos: Revenge is not a Strategy,' *The New York Times*, 03 January 2020.
- Sloan, Robert D. 'New Battlefields/Old Laws: Shaping a Legal Environment for Counterinsurgency,' *Proceedings of the Annual Meetings of the American Society of International Law*, Vol. 105. No.1 (2011), p. 372.
- Smith, Crispin. 'After Soleimani Killing, Iran and Its Proxies Recalibrate in Iraq,' *Just Security*, 27 February 2020.
- Smith, David. 'Pompeo Scrambles to Defend Trump Claim Killing Suleimani Will Save U.S. Lives,' *The Guardian*, 05 January 2020.
- Smyth, Phillip. 'How Iran Is Building Its Syrian Hezbollah,' *Washington Institute*, 08 March 2016.

- Smyth, Phillip. 'The Shiite Jihad in Syria and Its Regional Effects,' *Washington Institute for Near East Policy*, February 2015.
- Snow, Shawn, Howard Altman, and Aaron Mehta. 'Fears of New Conflict Rise After US Kills Qasem Soleimani, a Top Iranian General, in Strike on Baghdad Airport,' *Military Times*, 02 January 2020
- Sobelman, Daniel. 'Hezbollah's Arsenal and Means of Deterrence,' from *New Rules of the Game: Israel and Hezbollah after the Withdrawal from Lebanon* (Tel Aviv: Institute for National Security Studies, 2004).
- Sofaer, Abraham D. *The Best Defence? Legitimacy and Preventive Force* (Stanford: Hoover Institution Press, 2010).
- Sofaer, Abraham. 'On the Necessity of Pre-Emption,' *European Journal of International Law*, Vol.14, No.2 (2003), pp. 209-20.
- Solis, Gary D. *The Law of Armed Conflict: International Humanitarian Law in War*, (Cambridge: Cambridge University Press, 2010).
- Sorenson, David S. 'Warriors of God: Inside Hezbollah's Thirty-Year Struggle Against Israel,' (2012), pp. 383-385.
- Soufan Group. 'Intelligence Brief, Counter-terrorism from 20,000 Feet,' *Soufan Group*, 2016.
- Soufan, Ali. 'Qassem Soleimani and Iran's Unique Regional Strategy,' *Combating Terrorism Center at West Point*, Vol. 11, Issue 10, November 2018.
- Sparrow, Robert. 'Drones, Courage, and Military Culture,' *Routledge Handbook of Military Ethics* (London; Taylor and Francis, 2015), pp. 380-394.
- Sparrow, Robert. 'War Without Virtue?' in *Killing by Remote Control: The Ethics of an Unmanned Military* (Oxford; Oxford University Press, 2013), pp. 84-105.
- Speckhard, Anne and Stefanie Mitchell. 'Possibilities of Peace-Building in Iraq: Questions of Deradicalization and Reintegration amidst Sectarian Conflicts,' *International Center for the Study of Extremism* (2017).
- Spector, Leonard S., and Avner Cohen. 'Israel's Airstrike on Syria's Reactor: Implications for the Non-Proliferation Regime.' *Arms Control Today* Vol.38, No.6, (2008), pp. 15-21.
- Spyer, Jonathan. 'Review of Shadow Strike: Inside Israel's Secret Mission to Eliminate Syrian Nuclear Power.' *Middle East Quarterly*, (2020).

- Steffek, Jens. 'Legitimacy in International Relations: From State Compliance to Citizen Consensus,' in Hurrelmann A., Schneider S., Steffek J. (eds) *Legitimacy in the Age of Global Politics*, Palgrave MacMillan, 2007.
- Steinberg, Gerald M. 'The UN, the ICJ and the Separation Barrier: War by Other Means,' *Israel Law Review* Vol.38 (2005), pp. 331-47.
- Steinberg, James. 'Preventive Force in U.S. National Security Strategy,' *Global Politics and Strategy*, Vol. 47, No.4 (2006), pp. 55-72.
- Stepansky, Joseph. 'Timeline of Trump's Shifting Justifications for Soleimani Killing,' *Al Jazeera*, 19 February 2020.
- Sterio, Milena. 'Lethal Use of Drones: When the Executive is the Judge, Jury, and Executioner,' *The Independent Review* Vol.23, No.1 (2018), pp. 35-50.
- Sterio, Milena. 'The US Use of Drones in the War on Terror: The (Il)legality of Targeted Killings under International Law,' *Case Western Reserve Journal of International Law* Vol.45 (2012), pp. 197- 215.
- Sterio, Milena. *The Legality of the United States' Strike on Soleimani*, Law Faculty Articles and Essays (Cleveland: Cleveland University Press, 2020).
- Stevenson Michael D., 'Guns Across the River: The Battle of the Windmill, 1838 by Donald Graves,' *The Canadian Historical Review* Vol.83, No.4 (2002), pp. 606-608.
- Stiefler, Todd. 'CIA's Leadership and Major Covert Operations: Rogue Elephants or Risk-Averse Bureaucrats?' *Intelligence & National Security* Vol19. No.4, (2004), pp. 632-654.
- Stillman, Peter G. 'The Concept of Legitimacy,' *Journal of the Northeastern Political Science Association*, Vol. 7, No. 1, Autumn 1974.
- Stillman, Peter G. *The Concept of Legitimacy*, Vol.7, No.1, (University of Chicago Press, 1974), pp. 33-48.
- Stimson Task Force. *The Stimson Report*, 2014. Available online at: www.stimson.org/books-reports/recommendations-and-report-of-the-stimson-task-force-on-us-drone-policy/, accessed 13 February 2019.
- Stohl, Michael. 'The State as Terrorist: Insights and Implications, Democracy and Security,' from *Journal of Democracy and Security*, Vol. 2, Issue 1, 24 January 2007: pp. 1-25
- Stone, Julius. *Aggression and World Order: A Critique of United Nations Theories of Aggression* (London: The Lawbook Exchange, 2006).

- Stone, Roger. *The Making of the President 2016: How Donald Trump Orchestrated a Revolution*, (New York: Simon and Schuster, 2017).
- Storm, Morten, Paul Cruickshank, and Tim Lister. *Agent Storm: My Life Inside Al Qaeda and the CIA* (New York: Grove/Atlantic, 2014).
- Stover, William James. 'Preemptive War: Implications of the Bush and Rumsfeld Doctrines,' *International Journal on World Peace* (2004), pp. 3-14.
- Strawser, Bradley J. and Rory Carroll. 'The Philosopher Making the Moral Case for US Drones,' *The Guardian*, 02 August 2012.
- Street, Christopher T., and Kerry W. Ward. "Improving Validity and Reliability in Longitudinal Case Study Timelines," *European Journal of Information Systems* Vol.21, No.2 (2012), pp. 160-175.
- Stufflebeam, Daniel L., George F. Madaus, and Thomas Kellaghan. *Evaluation Models: Viewpoints on Educational and Human Services Evaluation* (Boston, MA: Kluwer Academic, 2nd ed., 2000).
- Subotić, Jelena. 'Narrative, Ontological Security, and Foreign Policy Change,' *Foreign Policy Analysis*, Volume 12, Issue 4, October 2016: pp. 610–627.
- Sun-Tzu and Samuel B. Griffith. *The Art of War*. (Oxford: Clarendon Press, 1964).
- Svarc, Dominika. 'Redefining Imminence: The Use of Force Against Threats and Armed Attacks in the Twenty-First Century,' *ILSA Journal of International and Comparative Law*, Vol.13 (2006), pp. 171.
- Tabatabai, Ariane and Dina Esfandiary. *Triple-Axis: Iran's Relations with Russia and China*, (London: Bloomsbury, 2018).
- Taft, William H., and Todd F. Buchwald. 'Preemption, Iraq, and International Law,' *The American Journal of International Law*, Vol. 97, No. 3 (2003), pp. 557-563.
- Taleb, Wael and Richard Hall. 'Hezbollah Supporters Say Revenge for Soleimani's Death Has Only Just Begun,' *Independent*, 17 January 2020.
- Talev, Margaret. 'President Trump Cancels Rule Requiring U.S. to Report Civilians Killed in Drone Strikes,' *Time*, 06 March 2019.
- Tams, Christian J. 'The Necessity and Proportionality of Anti-Terrorist Self-Defence,' Vol.45, No.1, *Israel Law Review* (2010), p. 373-422.

- Tandler, Jaclyn. 'Known and Unknowns: President Obama's Lethal Drone Doctrine,' *Notes de la FRS* 7 (2013).
- Taubman, Philip. 'Shiite Group Tied to Beirut Blasts,' *The New York Times*, 31 January 1984, p. 4.
- Taulbee, James Larry. 'Retaliation, Deterrence, Terrorism and the Regan Administration,' *Defence Analysis*, Vol. 4 (1985), pp. 281-283.
- Taylor, Jerome. 'Outrage at CIA's Deadly Double Tap Drone Attacks,' *Independent News*, 25 September 2012.
- Taylor, Terence. 'The End of Imminence?' *The Washington Quarterly*, Vol. 27 No. 4 (2004), pp. 57-58.
- ten Brinke, Lisa. 'Donald Trump's Rhetoric has only Highlighted the Already Growing Rift Between the EU and the US,' *LSE European Politics and Policy (EUROPP) Blog*, 27 January 2018.
- Terre Blanche, Martin and Kevin Durrheim. *Research in Practice: Applied Methods for the Social Sciences* (Cape Town: University of Cape Town Press, 1999).
- Tesón, Fernando R. 'Humanitarian Intervention: An Inquiry into Law and Morality,' (1988).
- Thakur, Ramesh. 'Law, Legitimacy and United Nations,' *Melbourne Journal of International Law*, Vol.11 (2010).
- Thakur, Ramesh. *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics*, Routledge, 2011.
- Tharoor, Shashi. 'Why America Still Needs the United Nations,' *Foreign Affairs* (2003), pp. 67-80.
- Thomas, Christopher A. 'The Uses and Abuses of Legitimacy in International Law,' *Oxford Journal of Legal Studies*, Vol. 34, Issue 4, 2014: pp. 729-758.
- Thomas, David. 'A General Inductive Approach for Qualitative Data Analysis,' *The American Journal of Evaluation*, Vol. 27, No.2 (2003), p. 27.
- Thomas, Kaleigh and Emma Moore. 'The American Public Wants a Sustainable Middle East Policy,' *Defence One*, 22 February 2020.
- Thomas, Ward. 'Norms and Security: The Case of International Assassination,' *International Security*, Vol. 25, No.1, Summer 2000: pp.105-133.

- Tibori-Szabó, Kinga. 'Self-Defence and the United States Policy on Drone Strikes,' *Journal of Conflict and Security Law* Vol.20, No.3 (2015), pp. 381-413.
- Tirman, John. 'Diplomacy, Terrorism, and National Narratives in the United States–Iran Relationship,' *Critical Studies on Terrorism*, Vol. 2, No.3 (2009), pp. 527-539
- TOI Staff. 'Four Hellfire Missiles and a Severed Hand: The Killing of Qassem Soleimani,' *The Times of Israel*, 03 January 2020.
- TOI Staff. 'Network of Syrian, Iraqi Spies Said to Have Helped US kill Soleimani,' *Times of Israel*, 09 January 2020.
- Tomes, Robert. 'Relearning Counterinsurgency Warfare,' Army War College, *Parameters* Vol.34, No.1 (2004), pp. 16-28.
- Toros, Harmonie. 'We Don't Negotiate with Terrorists: Legitimacy and Complexity in Terrorist Conflicts,' *Security Dialogue* Vol.39, No.4 (2008), pp. 407-426.
- Totten, Mark. 'Preemption and the War on Terror: Morality, law, and the Use of Force,' (2006), pp. 1379-1379.
- Trachtenberg, Marc. 'Preventive War and US Foreign Policy,' *Security Studies* Vol.16, No.1 (2007), pp. 1-31.
- Travalio, Greg and John Altenburg. 'Terrorism, State Responsibility, and the Use of Military Force,' *Chicago Journal of International Law*, Vol. 4, No.1 (2003), pp. 97-116.
- Trenta, Luca. 'The Obama Administration's Conceptual Change: Imminence and the Legitimation of Targeted Killings,' *European Journal of International Security*, Vol. 3, No. 1, (2018), pp. 69–93.
- Trump, Donald J. 'Statement from the President on the Designation of the Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization,' *White House*, 08 April 2019.
- Tucker, Robert W. and David C. Hendrickson. 'The Flip Side of the Record: The Commitment to Law Is Key to US Legitimacy,' *Foreign Affairs* (2005), pp. 139-141.
- Tucker, Robert W. and David C. Hendrickson. 'The Sources of American Legitimacy,' *Foreign Affairs*, Vol. 83, No.6, (2004), p. 24.
- Turnbull, Nick. *Interpreting Governance, High Politics and Public Policy*, Routledge, 2016: pp. 15-226.
- Turnbull, Nick. 'Interpretivism and Practice in Governance Studies: The Critique of Methodological Institutionalism,' *British Politics*, Vol. 6, 30 June 2011: pp. 252-264.

- Tushnet, Mark V. 'Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles,' *Harvard Law Review*, Vol. 96, No. 4, February 1983: pp. 781-827.
- Tzu, Sun. *The Art of War*, Book 1, Line 18-19, (Filiquarian Press, Reprinted 2007).
- U.K. House of Commons. 'Foreign Policy Aspects of the War Against Terrorism,' H.C., *Foreign Affairs Committee*, (2003), pp. 196-441, para t-429.
- U.K. Ministry of Defence. 'The UK Approach to Unmanned Aircraft Systems,' JDN 2/11, U.K. *Ministry of Defence*, 2011: p. 55.
- U.S. Code. 'Title 10: Armed Forces,' *Cornell Law School*, Accessed at <<https://www.law.cornell.edu/uscode/text/10>>.
- U.S. Code. 'Title 50: Covert Action Statute,' *Cornell Law School*, Accessed at <<https://www.law.cornell.edu/uscode/text/50/3093>>.
- U.S. Congress. 'H. Con. Res.83: Directing the President Pursuant to Section 5(c) of the War Powers Resolution to Terminate the Use of United States Armed Forces to Engage in Hostilities in Or Against Iran,' U.S. Congress, 09 January 2020
- U.S. Department of Defence. 'Immediate Release: Statement by the Department of Defence,' *United States Department of Defence*, 02 January 2020 <<https://www.defense.gov/Newsroom/Releases/Release/Article/2049534/statement-by-the-department-of-defense/>>.
- U.S. Department of Defence. 'Karbala Attackers Used U.S. Army-Styled Uniforms to Gain Access,' *American Forces Press Services*, 26 January 2007. <<https://archive.defense.gov/news/newsarticle.aspx?id=2838>>.
- U.S. Department of Defence. 'Press Briefing by Secretary of Defence Mark T. Esper,' *U.S. Department of Defence Archives*, 07 January 2020.
- U.S. Department of Defence. 'The Iranian Hostage Crisis,' Office of the Historian, *Foreign Service Institute* <<https://history.state.gov/departmentshistory/short-history/iraniancrises>>.
- U.S. Department of State. 'Secretary Michael R. Pompeo With John Berman of CNN New Day,' Interview Transcript, *U.S. Department of State Archives*, 03 January 2020.
- U.S. Department of State. 'Security Alert—U.S. Embassy Baghdad, Iraq, U.S. Embassy and Consulates in Iraq,' *U.S. Department of State Staff*, 31 December 2019 <<https://iq.usembassy.gov/security-alert-u-s-embassy-baghdad-iraq-123119/>>.

- U.S. Department of the Treasury. 'Treasury Designates Individual, Entity Posing Threat to Stability of Iraq,' *United States Department of the Treasury*, 07 February 2009.
- U.S. Government Publishing Office. 'Hezbollah in Latin America: Implications for U.S. Homeland Security,' Hearing before the Subcommittee on Counterterrorism and Intelligence of the Committee on Homeland Security, *House of Representatives*, 112 Congress, 1st Session, 07 July 2011 <<https://www.govinfo.gov/content/pkg/CHRG-112hhrg72255/html/CHRG-112hhrg72255.htm>>.
- U.S. House of Representatives. 'Chairman Schiff Statement on U.S. Strike Killing Iranian General Soleimani,' *U.S. House of Representatives Permanent Select Committee on Intelligence*, Washington D.C., 03 January 2020 <<https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=899>>.
- U.S. National Archives. 'The Provisions of Executive Order 12333,' 46 FR 59941, 3 CFR, 1981 Comp., *U.S. National Archives*, 04 December 1981, p. 200.
- U.S. Senate. 'Van Hollen Joins Murphy, Democratic Senators in Requesting Classified Briefing on Evidence Underlying 'Imminent Attacks' on U.S. Embassies,' *U.S. Senate Press Release*, 14 January 2020 <<https://www.vanhollen.senate.gov/news/press-releases/van-hollen-joins-murphy-democratic-senators-in-requesting-classified-briefing-on-evidence-underlying-imminent-attacks-on-us-embassies>>
- United Nations. 'Chapter VII — Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression,' *United Nations Charter*. <<https://www.un.org/en/sections/un-charter/chapter-vii/>>.
- United Nations. 'Delegates Consider Deadly Use of Drone Technology as Third Committee Hears More Presentations by Experts on Human Rights Obligations,' *U.N. Sixty-eighth General Assembly*, Third Committee, 25 October 2013.
- United Nations. 'Human Rights, Terrorism and Counter-terrorism Fact Sheet No. 32,' *Office of the United Nations High Commissioner for Human Rights*, July 2008 <<https://www.ohchr.org/documents/publications/factsheet32en.pdf>>.
- United Nations. 'Measures to Prevent International Terrorism Which Endangers or Takes Innocent Human Lives or Jeopardizes Fundamental Freedoms and Study of the Underlying Causes of Those Forms of Terrorism and Acts of Violence Which Lie in Misery, Frustration, Grievance and Despair and Which Cause Some People to Sacrifice Human Lives, in an

- Attempt to Effect Radical Changes,' G.A. Res. 40/61, *U.N. GOAR*, 40 Sess., Su. No. 53, U.N. Doc. A/40/53, 1985, p. 302.
- United Nations. 'Report of the Secretary General's High-Level Panel on Threats, Challenges and Change,' from *A More Secure World: Our Shared Responsibility* (New York: UN, 2004), para 188.
- United Nations. 'Report of the Secretary General's High-Level Panel on Threats, Challenges and Change,' from *A More Secure World: Our Shared Responsibility*, 2004.
- United Nations. 'Report to the Secretary-General, delivered to the General Assembly,' *In Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, 21 March 2005, para 124.
- United Nations. 'Resolution 1368 (2001) Adopted by the Security Council at Its 4370th Meeting, on 12 September 2001,' S.C. Res. 1368, U.N. SCOR, 56 Sess., 4370 Mtg., *U.N. Archive*. S/RES/1368, 2001.
- United Nations. 'Resolution 748 (1992) of 31 March 1992,' S.C. Res. 748, *U.N. SCOR*, 47 Sess., 3063d Mtg., U.N. Doc. S/RES/748, 1992, p. 52.
- United Nations. *Charter of the United Nations*, (San Francisco: United Nations, 1945), Article 2(4).
- United Nations. *Resolution 487 (1981) of 19 June 1981*, S.C. Res. 487, U.N. SCOR, 36 Sess., 228 Mtg., U.N. Doc. S/Res/487, 1981.
- United States Department of Defence. 'Covert Action,' *DoD Dictionary of Military and Associated Terms*, p. 53.
- US Department of State. 'Press Statement by Mike Pompeo: On the Treaty on Open Skies,' *US Department of Defence*, 21 May 2020: <https://2017-2021.state.gov/on-the-treaty-on-open-skies/index.html>.
- van de Wetering, Carina. *Changing US Foreign Policy Toward India*, New York: Palgrave Macmillan, 2016.
- Van den Hole, Leo. 'Anticipatory Self-Defence Under International Law,' *Amsterdam University International Law Review*, 19 (2003), p. 69.
- Van der Linden, Harry. 'Drone Warfare and Just War Theory,' Chapter 9 in *Drones and Targeted Killing: Legal, Moral and Geopolitical Issues*, ed. Marjorie Cohn (Northampton Mass: Olive Branch Press, 2015), p. 173.

- Van Dongen, T. W. 'Law Enforcement as Politics by Other Means: Lessons from Countering Revolutionary Terrorism,' *Police Practice and Research*, Vol. 14 (2013), pp. 428-441.
- Vanden Brook, Tom. 'New Rules Allow for More Civilian Casualties in Air War Against ISIS,' *Military Times*, 19 April 2016.
- Vatanka et al., Alex. 'The Killing of Qassem Soleimani: Analysis from MEI Experts,' *Middle East Institute*, 3 January 2020.
- von Billerbeck, Sarah B. K. and Birte Julia Gippert. 'Legitimacy in Conflict: Concepts, Practices, Challenges,' *Journal of Intervention and State Building*, Vol. 11, Issue 3, 07 August 2017: pp. 273-285.
- Wagner, Markus. 'Beyond the Drone Debate: Autonomy in Tomorrow's Battlespace,' *Proceedings of the Annual Meetings of the American Society of International Law*, Vol. 106, No.1 (2017), pp. 81-82.
- Wagner, Markus. 'Unmanned Aerial Vehicles,' from the *Max Planck Encyclopaedia of Public International Law* (Oxford: Oxford University Press, 2015), p. 1.
- Wagner, Steven B. *Statecraft by Stealth: Secret Intelligence and British Rule in Palestine*, Cornell University Press, 2019: pp. 1-336.
- Waldman, Thomas. 'Vicarious Warfare: The Counterproductive Consequences of Modern American Military Practice,' *Contemporary Security Policy* Vol 39.2 (2018), pp. 181-205.
- Wall, Tyler, and Torin Monahan. 'Surveillance and Violence from Afar: The Politics of Drones and Liminal Security-scapes,' *Theoretical Criminology* Vol.15, No.3 (2011), pp. 239-254.
- Wallner, Jennifer. 'Legitimacy and Public Policy: Seeing Beyond Effectiveness, Efficiency, and Performance,' *Policy Studies Journal* Vol.36, No.3 (2008), pp. 421-443.
- Walsh, James Igoe. 'The Rise of Targeted Killing,' *Journal of Strategic Studies* Vol.41, No.1-2 (2018), pp. 143-159.
- Walsh, James Igoe. *The Effectiveness of Drone Strikes in Counterinsurgency and Counterterrorism Campaigns* (Carlisle: Strategic Studies Institute, US Army War College, 2013).
- Walsham, Geoff. *Interpreting Information Systems in Organizations* (Chichester, NH: Wiley Publishing, 1993).

- Walters, William. *State Secrecy and Security: Refiguring the Covert Imaginary*, Routledge, 2021: pp. 1-190.
- Walzer, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed., (New York: Basic Books, 2000).
- Wang, Jian. 'Managing National Reputation and International Relations in the Global Era: Public Diplomacy Revisited,' *Public Relations Review*, Vol. 32, Issue 2, June 2006: pp. 91-96.
- Warner, Michael. 'A Matter of Trust: Covert Action Reconsidered,' *Studies in Intelligence*, Vol. 63, No.4, December 2019: p. 33.
- Warraich, Ahmad Nazir. 'The Use of Drones: Legal Grey Area?' *Islamabad Institute of Strategic Studies*, 2012, p. 65.
- Warrell, Helen. 'From Desert Storm to Soleimani: How U.S. Drone Warfare Has Evolved,' *Financial Times*, 09 January 2020.
- Warren, Aiden, and Ingvild Bode. 'Self-Defense in International Law: Preemptive/Preventive Requisites,' from *Governing the Use-of-Force in International Relations*, (London: Palgrave Macmillan, 2014), pp. 23-45.
- Washington, Ellis. *The Progressive Revolution: History of Liberal Fascism through the Ages, Vol. V: 2014-2015 Writings* (New York: Rowman & Littlefield, 2016).
- Wastnidge, Edward. 'Iran and Syria: An Enduring Axis,' *Middle East Policy* Vol.24, No.2 (2017), pp. 148-159.
- Waxman, Matthew. 'The Use of Force Against States the Might Have Weapons of Mass Destruction,' *Michigan Journal of International Law*, 2009.
- Weatherford, M. Stephen. 'Measuring Political Legitimacy,' *The American Political Science Review*, Vol. 86, No.1, March 1992: pp. 149-166.
- Weatherford, Stephen M. 'Measuring Political Legitimacy,' *The American Political Science Review* (1992), pp. 149-166.
- Webb, W., and C. J. Auriacombe, 'Research Design in Public Administration: Critical Considerations,' *Journal of Public Administration* Vol.41, No.3 (2006), pp. 588-602.
- Webster, Daniel. 'Letter to British Foreign Minister Lord Ashburton,' August 6, 1842, in the U.S. Department of State, Digestive International Law, Washington DC: U.S. Department of State, 1906, p. 412, in Louis Henkin, Oscar Schachter, Richard C. Pugh, and Hans Smit,

- eds., *International law: cases and materials*, 3rd ed., (St. Paul Minnesota: West publishing, 1993), pp. 872-873.
- Webster, Matt. *Inside Israel's Mossad: The Institute for Intelligence and Special Tasks* (London: Rosen Publishing Group, 2002).
- Wege, Carl Anthony. 'Hizbollah Organization,' *Studies in Conflict and Terrorism*, Vol.17, No.1 (1994), pp. 157-158.
- Weiner, Tim. *Legacy of Ashes: The History of the CIA* (New York: Anchor, 2008).
- Weisburd, Arthur Mark. *Use of Force: The Practice of States Since World War II* (Carlisle: Penn State Press, 1997).
- Weiss, Thomas G. *What's Wrong with the United Nations and How to Fix it* (London: John Wiley, 2016).
- Wenger, Andreas and Alex Wilner. *Deterring Terrorism: Theory and Practice* (Stanford: Stanford University Press, 2012).
- Wenzel, Matthias and Jochen Koch. 'Strategy as Staged Performance: A Critical Discursive Perspective on Keynote Speeches as a Genre of Strategic Communication,' *Strategic Management Journal*, March 2018.
- Weston, Burns H., Richard A. Falk, and Anthony D'Amato. *Basic Documents in International Law and World Order*, (St. Paul, MN: West Publishing, 1990).
- Wey, Adam Leong Kok, *Killing the Enemy: Assassination operations during World War II*, (London: Bloomsbury, 2015).
- Whipple, Chris. *The Spymasters: How the CIA Directors Shape History and the Future* (New York: Simon and Schuster, 2020).
- White House, 'President Bush Outlines Iraqi Threat: Remarks by the President on Iraq,' *White House Press Office*, Cincinnati, Ohio: The White House, 2002.
- White House. 'President Delivers State of the Union Address: The President's State of the Union Address,' United States Capitol, *The White House*, 2002.
- White House. 'Press Briefing by Secretary of State Mike Pompeo and Secretary of the Treasury Steven Mnuchin on Iran Sanctions,' *White House Press Office*, 10 January 2020.
- White House. 'Remarks by President Trump and Prime Minister Mitsotakis of the Hellenic Republic Before Bilateral Meeting,' *White House Press Office*, 7 January 2020.
- White House. 'Remarks by President Trump on Iran,' *White House Press Office*, 08 January 2020.

- White House. 'Remarks by President Trump on Proposed National Environmental Policy Act Regulations,' *White House Press Office*, 09 January 2020. <<https://www.whitehouse.gov/briefings-statements/remarks-president-trump-proposed-national-environmental-policy-act-regulations/>>
- White House. 'Remarks by President Trump on the Killing of Qasem Soleimani,' *White House Press Office*, Mar-a-Lago Resort in Palm Beach, Florida, 03 January 2020.
- White House. 'The National Security Strategy of the United States of America,' *National Security Council Archives*, (2002) pp. 12-16.
- White House. *President Delivers State of the Union Address: The President's State of the Union Address* (Washington DC: The White House, 2002), p. 15.
- White, Nigel D. and Lydia Davies-Bright. 'Drone Strikes: A Remote Form of Self-Defence?' *Research Handbook on Remote Warfare* (London: Edward Elgar, 2017).
- White, Nigel D. 'The Joint Committee, Drone Strikes and Self-Defence: Caught in No Man's Land?' *Journal on the Use of Force and International Law* Vol.3, No.2 (2016), pp. 210-216.
- Whitman, Jim. 'Humanitarian Intervention in an Era of Preemptive Self-Defence,' *Security Dialogue* Vol.36, No.3 (2005), pp. 259-274.
- Wiechnik, Stan. 'Political Legitimacy and Values,' *Small Wars Journal*, Vol.9 No.11 (2013).
- Wigginton, Michael, et al. 'Al-Qods Force: Iran's Weapon of Choice to Export Terrorism,' *Journal of Policing, Intelligence and Counter-Terrorism* Vol.10, No.2 (2015), pp. 153-165.
- Williams, Brian Glyn. 'New light on CIA Double Tap Drone Strikes on Taliban First Responders in Pakistan's Tribal Areas,' *Perspectives on Terrorism* Vol.7, No.3 (2013), pp. 79-83.
- Williams, Jennifer. 'From Torture to Drone Strikes: The Disturbing Legal Legacy Obama is Leaving Trump,' *Vox*, 10 January 2020.
- Williams, Malcolm. 'Interpretivism and Generalisation,' *Sage Journals*, Vol. 34, Issue 2, 01 May 2000: pp. 209-224.
- Williams, Robert D. '(Spy) Game Change: Cyber Networks, Intelligence Collection, and Covert Action,' *George Washington Law Review*, Vol.79 (2010), pp. 1162-1200.
- Wilmshurst, Elizabeth. *Principles of International Law on the Use of Force by States in Self-Defence* (London: Chatham House, 2005).

- Wilner, Alex. 'The Dark Side of Extended Deterrence: Thinking Through the State Sponsorship of Terrorism,' *Journal of Strategic Studies* Vol.41, No.3 (2018), pp. 410-437.
- Wilson, Peter. 'The Myth of the 'First Great Debate,' In Tim Dunne, Michael Cox & Ken Booth (ed.), *The Eighty Years' Crisis: International Relations 1919–1999*, (Cambridge: Cambridge University Press, 1998), pp. xiii–xx, 1-16.
- Wilton, Carol. *Popular Politics and Political Culture in Upper Canada 1800-1850* (Montreal/Kingston: McGill-Queens University Press, 2000).
- Winkler, Willi. *Die Geschichte Der RAF* (Berlin: Rowohlt, 2007).
- Wirtz, James J., and James A. Russell. 'US Policy on Preventive War and Preemption,' *The Non-Proliferation Review* Vol.10, No.1, (2003), pp. 113-123.
- Wittes, Benjamin. 'Notes on the Erosion of Norms of Armed Conflict,' *Lawfare*, 14 January 2015; and Ian Clark et al., 'Crisis in the Laws of War? Beyond Compliance and Effectiveness,' *European Journal of International Relations*, Vol. 24, Issue 3, 2017: pp. 319-343.
- Wolfson, Paul. 'Preemption and Federalism: The Missing Link,' *Hastings Law Quarterly* 16 (1988), p. 69.
- Woods, Chris. 'Covert Drone Strikes and the Fiction of Zero Civilian Casualties,' *Precision Strike Warfare and International Intervention: Strategic, Ethico-Legal and Decisional Implications* (2014), pp. 95-113.
- Woods, Chris. *Get the Data: The Return of Double-Tap Drone Strikes*, The Bureau of Investigative Journalism, 01 August 2013.
- Woods, Chris. *Sudden Justice: America's Secret Drone Wars* (Oxford University Press, 2015).
- Woodward, Bob and Charles R. Babcock. 'Antiterrorist Plan Rescinded After Unauthorized Bombing,' *The Washington Post*, 12 May 1985, p. A-26.
- Woodward, Bob. *Veil: The CIA Secret Wars, 1981-87* (New York: Simon and Schuster, 1987).
- Worley, Duane Robert. *Waging Ancient War: Limits on Preemptive Force*, Strategic Studies Institute (Carlisle: US Army War College, 2003).
- Worthy, Ben and Marlen Heide. 'Donald Trump: Openness, Secrets and Lies,' *Democratic Audit Blog*, 19 February 2019.
- Wrange, Pål. 'Impartial or Uninvolved? The Anatomy of 20th Century Doctrine on the Law of Neutrality,' *The Anatomy of 20th Century Doctrine on the Law of Neutrality* (2007).

- Wright, Julia. 'The Killing of Soleimani is Tantamount to an Act of War,' *The New Yorker*, 03 January 2020.
- Wright, Robin. *Sacred Rage* (New York: Touchstone, 2001).
- Yaoren, Kenneth Yeo. 'Leadership Decapitation and the Impact on Terrorist Groups,' from *Counter-Terrorist Trends and Analyses*, Vol. 11, No. 3 (2019), p.7.
- Yeung, et al., Jessie. 'Iran's Top General Soleimani Killed in US Strike,' *CNN*, 04 January 2020.
- Yin, Robert K. 'Case Study Research: Design and Methods,' in *Applied Social Research Methods*, Vol. 5, (London: Sage Publications, 2003).
- Yin, Tung. 'Game of Drones: Defending Against Drone Terrorism,' *Texas A&M University Law Review*, Vol. 2 (2015), pp. 635-673.
- Yolcu, Furkan Halit. 'Iran's Involvement with Syrian Civil War: Background, Reasons and Alternatives,' *Bilgi Dergi* Vol.18, No.2 (2016), pp. 35-64.
- Yom, Sean. 'US Foreign Policy in the Middle East: The Logic of Hegemonic Retreat,' *Global Policy*, Vol. 11, No.1, (2020), pp. 75-83.
- Yoo, John. 'International Law and the War in Iraq,' *The American Journal of International Law* Vol.97, No.3 (2003), pp. 563-576.
- Yoo, John. 'War, Responsibility, and the Age of Terrorism,' *Stanford Law Review* Vol.57 (2004), pp. 793-823.
- Young, Joseph K. 'Morality, Efficacy, and Targeted Assassination as a Policy Tool,' *Journal of Criminology & Public Policy*, Vol.16, No.1 (2017), pp. 225-30.
- Zakaria, Fareed. *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: Norton 2004).
- Zambakari, Christopher. 'Executive Powers and the Targeted Killing of Gen. Qassem Soleimani,' from *Executive Powers and the Targeted Killing of Gen. Qassem Soleimani*, Georgetown Public Policy Review (2020).
- Zarefsky, David. 'Public Sentiment Is Everything: Lincoln's View of Political Persuasion,' *Journal of the Abraham Lincoln Association*, Vol.15, No.2 (1994), pp. 23-40.
- Zech, Steven T. 'Decapitation, Disruption, and Unintended Consequences in Counterterrorism: Lessons from Islamist Terror Networks in Spain, *Defense & Security Analysis*,' Vol. 32, (2016), pp. 177-191

- Zegart, Amy B. *Spying Blind: The CIA, the FBI, and the Origins of 9/11* (Princeton: Princeton University Press, 2009).
- Zenko, Micah. 'Donald Trump is Pushing America's Special Forces Past the Breaking Point,' *Foreign Policy* 1 (2017).
- Zenko, Micah. 'Leon Panetta Reflects on U.S. Drone Strikes,' *Council on Foreign Relations*, 04 February 2013.
- Zenko, Micah. 'Reforming U.S. Drone Strike Policies,' *Council on Foreign Relations*, Special Report No. 65, January 2013, pp. 3-28.
- Zimmerman, Katherine. 'Iran's Man in Yemen and the al Houthis,' *American Enterprise Institute on Foreign and Defence Policy*, 16 January 2020.
- Zimmt, Raz. 'Portrait of Qasem Soleimani, Commander of the Iranian Islamic Revolutionary Guards Corps Quds Force, Instigator of Iranian Subversion and Terrorism in the Middle East and around the Globe,' *The Meir Amit Intelligence and Terrorism Information Center: Israeli Intelligence and Heritage Commemoration Center*, 29 October 2015, p. 8.
- Zisser, Eyal. 'Hizballah in Lebanon at the Crossroads,' *Terrorism and Political Violence* Vol.8., No.2 (1996), pp. 90-110.
- Zoller, Elisabeth. 'The Law Applicable to The Preemption Doctrine,' *Proceedings of The ASIL Annual Meeting*. Vol. 98, (2004).
- Zulaika, Joseba and William Douglass. *Terror and Taboo: The Follies, Fables, and Faces of Terrorism*, Routledge, 2016.
- Zulaika, Joseba. 'Drones, Witches and Other Flying Objects: The Force of Fantasy in US Counterterrorism,' from *Critical Studies on Terrorism*, Vol. 5, Issue 1, 10 April 2012: pp. 51-68.
- Zulaika, Joseba. *Hellfire from Paradise Ranch: On the Front Lines of Drone Warfare* (Berkley: University of California Press, 2020).
- Zumwalt, Lt. Col. James G. 'The Unique Weapon That Took Out Soleimani,' *The Hill*, 20 February 2020.
- Zurcher, Anthony. 'Could the Killing of Iranian General Help Trump Get Re-Elected,' *BBC News*, 06 January 2020.